

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 14, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
OATH OF OFFICE FOR
NEW COMMISSIONERS**

Al Garcia and Zeya Mohsin

Gail Blalock, City Clerk, swore in **Al Garcia and Zeya Mohsin** as members of the Planning Commission. Commissioner Garcia and Commissioner Mohsin then took their place along the Commissioners to become part of the voting body for the agenda items.

**III.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Duncan, Heyden, Joki, Lindsay and Rodriguez

**IV.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**V.
APPROVAL OF MINUTES
December 10, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of December 10, 2003.

There were no changes from staff.

Commissioner Lalwani noted that on page 1, the Subcommittee members are not accurate. **James Lindsay, Acting Planning Manager**, replied that the minutes accurately reflect what was said but the Subcommittee rotation had not taken into consideration the new Commissioners and the current agenda is reflective of the change.

Motion to approve the minutes as submitted.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**VI.
ANNOUNCEMENTS**

Mr. Lindsay announced the hiring of a new Senior Planner, Dennis Carrington, who has over 30 years of planning experience and comes directly from the City of Richmond and who also worked for the City of Dublin. Mr. Lindsay welcomed Mr. Carrington to the Planning Division. Mr. Lindsay also referenced the new Subcommittee rotation that was handed out and noted that Commissioner Giordano and Commissioner Sandhu are regular members and Commissioner Lalwani is the alternate. Staff will be announcing the new rotation schedule every three months.

Commissioner Lalwani welcomed the new Commissioners and noted that it is quite historic that this is the first time that the Commission has three women Commissioners that would bring more nurturing to the Commission.

Commissioner Giordano asked Chair Nitafan to follow suit with the City Council and adjourn in memory of Michael Mihalakis, who was killed in Iraq.

Chair Nitafan noted that since Cliff Williams is no longer on the Planning Commission, there is a vacancy for the 50th anniversary committee and he will be taking that position. Chair Nitafan also wished everyone a Happy New Year.

**VII.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Giordano/Galang

AYES: 7

NOES: 0

**VIII.
ELECTION OF
OFFICERS (VICE
CHAIR)**

Chair Nitafan opened up nominations for Vice Chair.

Commissioner Sandhu nominated Commissioner Lalwani for Vice Chair and Commissioner Galang seconded the nomination.

Commissioner Lalwani accepted the nomination.

There were no other nominations for Vice Chair so Commissioner Lalwani is now the Vice Chair.

**IX.
CONSENT CALENDAR
Item Nos. 3, 4, 5, 6, 7 and 8**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted a change to the recommendation of Agenda Item No. 2 (Administrative Item No. AD2003-16 – O’toole Elms). Mr. Lindsay explained that staff has received an arborist’s report addressing the current status of the elm trees, which is not good. He explained that KB homes are proposing to construct a public park within the elm growth, and staff is requesting more time to consider the report in conjunction with the proposed land use. The public will be renoticed and the item will be continued to coincide with the KB hearing.

The commission agreed to put Agenda Item No. 2 on consent with the modified recommendation.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6 and 7.

There were no speakers from the audience.

**Close Public Hearing on
Item Nos. 3, 4, 5, 6 and 7
and continue Item No. 2 to
no date certain**

Motion to close the public hearing on Item Nos. 3, 4, 5, 6 and 7 and continue Item No. 2 to no date certain.

M/S: Lalwani/Mohsin

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7 and 8.

- *2 ADMINISTRATIVE ITEM NO. AD2003-16:** Proposed Cultural Resource Site designation of the 'O'Toole Elms located between South Main and South Abel Streets, north of the Main Fire Station (APN: 086-11-013 & 086-11-008). Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Continuance to coincide with the public hearing for the KB development)*
- *3 USE PERMIT NO. UP2003-49:** A request to locate a church in the Single Family Residential District at 297 Autrey Street (APN: 026-03-029). Applicant: Living Water Baptist Church. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2358) *(Recommendation: Approval with Conditions)*
- *4 USE PERMIT NO. UP2003-43:** Request to operate a restaurant and bakery without providing 9 required parking spaces located at 273 West Calaveras Boulevard (APN: 022-25-042). Applicant: Harry Kho. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2351) *(Recommendation: Approval with Conditions)*
- *5 USE PERMIT NO. UP2003-47:** Request to operate a cafe, Starbuck's, with 34 indoor and 13 outdoor seats without providing thirteen (13) required parking spaces at 1487 Landess Avenue (APN: 088-35-011). Applicant: Zeden Jones. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2357) *(Recommendation: Approval with Conditions)*
- *6 USE PERMIT NO. UP2003-50:** A request to locate a 72 seat take-out restaurant, including outdoor seating, in the Town Center District (TC) at 70 North Milpitas Boulevard (APN: 028-12-021). Applicant: Panda Restaurant Group. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2359) *(Recommendation: Approval with Conditions)*
- *7 USE PERMIT NO. UP2003-53:** A request to permit an existing legal non-conforming restaurant, Taqueria Las Vegas, with 28 seats (20 indoor and 8 outdoor) with sale of beer and wine at 1417 North Milpitas Boulevard (APN 22-02-009). Applicant: Francisco & Jesus Rodriguez. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2361) *(Recommendation: Approval with Conditions)*
- *8 S-ZONE APPROVAL AMENDMENT (SA2003-165):** A request to remove 457 young, diseased trees, to be replaced with 368 new trees for a net loss of 89 trees on-site at 400-940 McCarthy Boulevard (APN: 022-29-034 & 035). Applicant: LCM. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

M/S: Lalwani/Galang

AYES: 7

NOES: 0

**X.
PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. USE PERMIT NO.
UP2003-48 AND
ENVIRONMENTAL
ASSESSMENT NO.
EA2003-12:**

Request to operate a church in three vacant industrial buildings located in the Heavy Industrial zoning district at 995, 1201 and 1225 Montague Expressway.
Applicant: ArcTec, Inc.

James Lindsay, Acting Planning Manager, presented Use Permit No. UP2003-48 and Environmental Assessment No. EA2003-12, a request to operate a church in three vacant industrial buildings located in the Heavy Industrial zoning district at 995, 1201 and 1225 Montague Expressway. Mr. Lindsay recommended approval with conditions and modified condition no. 4 and added condition no. 20 which read as follows:

4. *The applicant shall submit to the city, as and when requested, evidence that a minimum of 2 adult crosswalk guards have been, and will continue to be, posted at the driveway crosswalk during weeknights (30 minutes before peak attendance activities begin and 30 minutes after such events end) as well as Sundays (from 9:30 a.m. to 3:00 p.m.).*
20. *If the city determines any Conditions of Approval are not complied with at the times prescribed, the use permit shall be subject to review by the Planning Commission during a public hearing for possible modifications or possible revocation of approved use permit no. UP2003-48.*

Commissioner Galang noted that in the year 2000, four research buildings were constructed and completed and asked why are they now vacant. Mr. Lindsay explained that the buildings were originally going to be occupied by Cisco Systems, but since the downturn of the economy, the buildings are now for sale.

Commissioner Galang asked why one of the four buildings (Building A) is not included in the proposal. Mr. Lindsay explained that it is his understanding that the church intends on purchasing all four of the buildings and building A would be leased as an office or industrial business.

Commissioner Giordano noted that in the hazardous materials section of the staff report, she wanted to understand the language and impact that it would have near the business park. She noted that in 1996, there was a risk assessment done and read further that there was a materials survey that was submitted in December of 2003. She asked staff to explain the survey.

Mr. Lindsay explained that the Fire department provides the guidelines on which the survey needs to be conducted. The church hired a firm that did site visits and records research within the Fire department to see what types of materials businesses are using in the area and to see what chemicals could be released in the area. The firm also dictated any emergency action items that needed to be addressed and according to the Fire department, the church did do that to their satisfaction.

Commissioner Giordano asked if that process would be done on an annual basis and Mr. Lindsay replied that the same process would occur every year and that the baseline could change every year, so the applicant would have to make the appropriate changes to the satisfaction of the Fire department.

Commissioner Sandhu had a question on condition no. 10 which reads as follows:

10. All roof-top equipment shall be shielded from view in a manner to the approval of the Planning Commission or its designee as specified in Section XI-10-42.10-2 of the Milpitas Municipal Code. Prior to the issuance of any permit for any roof-top equipment which projects above the height of any existing parapet wall or screen, detailed architectural plans for the screening of this equipment and/or a line-of-sight view analysis demonstrating that the equipment will not be visible from surrounding view points shall be reviewed and approved as specified in Section CI-10-42.10-2 of the Milpitas Municipal Code, in order to assure the screening of said equipment is in keeping with and in the interest of good architectural design principles. (P)

Commissioner Sandhu asked if the church will be making changes on the roof top and Mr. Lindsay replied, "No", and noted that this is a standard condition that planning uses on every application. He explained that since the church will be having a cafeteria in the classroom building, condition no. 10 was added as a standard condition, and is applicable because there is a potential to put equipment on the roof, and noted that no exterior modifications are being proposed with this use permit.

Vice Chair Lalwani was concerned that the nearby business uses ammonia, and asked what was the proximity from the church to the building and Mr. Lindsay replied that it is within several hundred feet.

Vice Chair Lalwani noted the concerned letter from WP investments, which included articles from the San Jose Mercury news and the Morgan Hill Times about churches and asked staff if the applicant was given the same material. Mr. Lindsay replied that they would be provided the article.

Commissioner Garcia asked what recourse would the church have if a business was trying to have materials in their buildings, and asked if the church could stop it. Mr. Lindsay replied that any business has a right to use hazardous materials within the business park as long as they comply with fire guidelines and the church would be the one to adjust their activities to any changes within the business environment and it is not the City's intention to restrain or restrict industrial businesses.

Chair Nitafan need clarification on added Condition no. 20 which reads as follows:

20. If the city determines any Conditions of Approval are not complied with at the times prescribed, the use permit shall be subject to review by the Planning Commission during a public hearing for possible modifications or possible revocation of approved use permit no. UP2003-48.

Mr. Lindsay explained that the City has the ability to bring the church back for review if they do not comply with the conditions during the times prescribed.

Chair Nitafan asked if the ammonia is active now and Mr. Lindsay replied, "Yes".

Chair Nitafan asked if staff has a history of any chemicals being released and Mr. Lindsay deferred the question to Patricia Joki, Fire Marshall.

Pati Joki, Fire Marshall, explained that she doesn't know the exact number of releases but that there was a release in 2003. She explained that the engineering safeguards that were in place at the site worked as designed so the release itself was minimized. She also explained that the system was upgraded to meet current code in the summer of 2003.

Chair Nitafan invited the applicant to speak.

Pastor Sean Lee representing Korean Baptist church, 6703 Capri Circle, San Jose, asked for Planning Commission approval of conditional use permit at 995, 1201, and 1225 Montague Expressway for the church. Pastor Lee thanked city staff for their excellent job in reviewing the proposal, analyzing key issues and recommending conditions for the operation. Pastor Lee noted that Korean First Baptist church is a 23-year-old religious institution with a congregation of 1,300 members, including members from Milpitas and from surrounding communities. He noted that it is the largest in the bay area and functions like any other neighborhood church. The church has two sanctuaries for church prayers and religious programs and will be offered on Saturday and Sunday and religious programming will be offered on two weeknights, Wednesday and Friday. Pastor Lee explained that the church is a low intense use that does not impact nearby operations and is very excited about moving to Milpitas as many of the members are city residents and are very supportive of the relocation.

Sean Morley, 99 Almaden Blvd., Real estate advisor for the church, explained that the congregation has outgrown its current facility and felt that the Montague location is the perfect location. He explained that the church meets zoning regulations and is designed for church services and administration. It is typical to that of other churches and the church will not be available to the general public and will not have retail. He noted that staff is minimal during the week and there will be no childcare or schools. The proposed project will not have any effects on the environment and it is important to note that the church is part of an original approval that came to a prior approval for the office buildings, and the concerns that were addressed at that time are similar, if not identical. Mr. Morley explained that the Fire Marshall has addressed issues with the emergency action plan and the church will be able to effectively educate their congregation about the safety plan that will be reviewed on an annual basis, and added that the church will be posting signage and will have crossing guards.

Vice Chair Lalwani asked Mr. Morley if he was aware of the two articles in the paper about churches. Mr. Morley replied, "Yes", and explained that many communities like Milpitas require churches to seek special approval in industrial areas. He explained that in San Jose, there are specific industrial areas that San Jose sets aside for no other uses but office and industrial for economic purposes which are designated pure industrial zones, where school and residential or no other uses are allowed. He explained that in the article, the church wanted to go to a pure industrial area for economic purposes and was not allowed. Therefore, the conditional use for the Korean church does not apply. He explained that Milpitas has many churches that have been approved in industrial areas with a conditional use permit and the church is more concerned about safety than anybody and the church would not have looked at a place that was in harms way.

Chair Nitafan opened the public hearing and asked speakers to fill out their name and address on the designated form at the dais and noted that comments are limited to two minutes and that if the speaker requests more time, they can yield their time to a designated person.

David Denton, WP Investments, 2101 Woodside Road, Woodside, CA, mentioned that he is very supportive of the church but wanted to make sure everyone understands the risks that are associated with putting a church in an industrial location. He explained that he and his partners developed the entire project in 1996 and that there is 9,000 pounds of liquid ammonia in the facility and there have been releases in the past and one in 2003. Mr. Denton also explained his concerns about truck traffic, and noted that 200 trucks go by a day through the main entryway from 6 a.m. to 6 p.m. and that currently, the business park is 35% vacant, so any truck traffic count done today is not at full occupancy. He was concerned that the trucks are not used to seeing families with kids crossing the street and felt that the crossing guards is a great idea but not enough, and felt that any interaction with big trucks and pedestrians is a serious risk.

Steve Normant, Junior High Youth Pastor, 2358 Lucretia Ave., San Jose, stated that he is very excited about having a church in Milpitas and felt it is a wonderful location because it is near the freeway, and will be quick and easy to get to the church. He felt there would be no negative impact to the residential community because the main time is on the weekend and two weeknights, which won't interfere with normal hours of businesses and felt the church would be a very positive impact to the community.

Sam Shin, 2201 Monroe Street, Santa Clara, High School Pastor, is very excited about locating in Milpitas and felt it was beneficial to other businesses around the congregation.

Don Peoples, 344 Springcreek Lane, Milpitas, President of Downtown Association, felt that the City would be a great home for the church and if all things were perfect, the church would have a better location and as long as the church knew the danger, it is a good location for them during the economy situation. Mr. Peoples yielded his two minutes to Mr. Denton.

Mr. Denton went on to explain that toxins are by far the bigger problem and noted that the church is less than 300 yards away where the ammonia leak was. He explained that if there was a release, it would be disastrous for people in the parking lot, and they would not know what to do if a warning alarm went off. He also noted that in 1996, a risk assessment noted the possibility that the wind in Milpitas, blowing from the northwest, would blow any chemical releases in the area.

Marshau Mun, 1925 Barussa Drive, San Ramon, CA, member of the church, works down the street with Seagate and is familiar with safety. He explained that he is certified first aid and that Seagate employees have fire drills, and he is very familiar with the chemicals that are used. He is very excited to move to Milpitas and supports the church.

Ed Connor, 1515 North Milpitas Blvd., noted that the City should put a crosswalk at least 20 feet over the intersection and would recommend an overhead walkway between all three buildings to keep people out of the weather. He explained that he has worked in industrial areas and would not want to have that on his conscious.

Pete McHugh, 654 Los Pinos Avenue, Milpitas, is in support of staff's recommendation for approval of the church. He felt that there are adequate safeguards and the annual update of the monitoring plan gives assurances that it will work. He noted that a similar proposal of a Muslim school in Santa Clara was approved 6 or 7 years ago and the distance between the school and LSI Logic was less than 40 yards and there have been no problems. He noted that it would not be a guarantee but staff is recommending prudent conditions that will assure that there will be no problems. He felt that the church is good for the diversity of Milpitas.

Taks Chang, member of Human Relations County, 765 Edge Lane in Los Altos, mentioned that he is a good friend of Pastor Lee and frequents the church. He is supporting it because the church is the biggest one in the Korean community and he is a strong believer that San Jose is losing and Milpitas is winning.

James Lee, 1118 Corvallis Drive, San Jose, mentioned that Cisco was going to have 500 employees at the site more than 40 hours a week and there was no problem but now that a church wants to go to the site less than 5 days a week, there are concerns. He felt that if Milpitas is concerned about the hazards, they should have taken action with Cisco employees and residences nearby.

Jennifer Kawaski, 979 Erie Circle, noted that she has been living in Milpitas since 1985 and is supporting the church coming to Milpitas and hopes the project will get approved because it will be an asset economically.

Rob Shannon, 450 West Santa Clara Street, yielded his time to Dave Denton.

Regarding Cisco employees versus families with kids, Mr. Denton noted that kids never stay where they are supposed to and do not follow the rules, but it is up to the Commission to decide that. Regarding the conditions in the staff report, Mr. Denton was concerned that the hours of operation were not part of the condition of approval and thought they should be. He also noted that the staff report indicates that the church will take the responsibility for taking whatever protective steps to accommodate future uses of the park, so that their occupancy doesn't result in more restrictive standards on future tenants of the park. Mr. Denton explained that it should be a condition because the church is going to have to react since they are an unusual use going to an industrial park and there are good reasons why cities segregate industrial uses from other places.

Bart Heckman, Attorney representing the applicant, rebutted that Mr. Denton has a poor way of showing his support for the church. He explained that the church is not talking about a situation where patrons are going to be crossing the freeway but will be crossing a driveway. He noted that the conditions include crossing guards and felt that truck drivers can recognize children and won't go tearing into a place where they see children crossing and a lot of people. His example was that all of the children present at the meeting came into the building with no crossing guards. There will not be a traffic issue because the hours of operation of the church are different from other business. Mr. Heckman also noted that the reason why Morgan Hill denied the church use permit was because Morgan Hill felt the church was going to outgrow its parking and the City wanted the church to come up with a permanent parking solution but the church couldn't.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Giordano was concerned about liability and asked Attorney Faubion for her input. **Attorney Kit Faubion** explained that the City enjoys a number of exemptions from liability based on the discretionary decisions that are made, but it doesn't mean that the City can never be liable for situations down the way such as extreme negligence or ignoring evidence. The obligation of the Commission is to review the environmental documents that inform the City what the consequences could be. The two main points from the negative declaration were raised and points to keep in mind are to review the document and the findings in the ordinance in the staff report to approve the use permit.

During the public hearing, there were concerns about possible releases and Chair Nitafan asked Ms. Joki to comment. Ms. Joki explained that the ammonia refrigeration is set up as receiver vessels and there is piping that will take the liquefied ammonia throughout the refrigeration room to make sure that it stays cool and comes back to receiver vessels. She noted that the fire and mechanical code was upgraded the past summer, and within the codes there are safeguards and controls and minimum life safety requirements. There are control valves that isolate part of the piping so that if you have a release, it is intended to be mitigated and if you have a substantial release, there is a dump tank that allows the receiver vessels to be placed in a safe state, which is putting a large volume of water that would dissipate the ammonia. She noted further that it doesn't mean there is a guarantee that there will not be a release but it does meet the state code for these kinds of systems. She noted that she can't image a release of the full 9,000 pounds of ammonia but can't say that it would never happen.

Chair Nitafan mentioned the concern about 200 trucks in the area and asked about the proposed safeguards. Mr. Lindsay noted that the traffic analysis was based on the leaseable space that is occupied now which is 35% to 40% vacant and that the traffic surveys were done on weeknight and weekends. He explained that the 1999 study is more reflective of an eventual 90% lease rate of the business park and is expected to have more truck traffic as more tenants come to the park. Staff took the 90% lease rate into consideration when drafting the conditions of approval and felt that the safeguards would be adequate to the pedestrians crossing the road.

Chair Nitafan mentioned his concerns about members following guidelines in case something was to happen and mentioned that he would like to make sure that the applicant has devised training programs and procedures.

In case of an emergency of a possible leak of ammonia, Commissioner Sandhu asked if there would danger to the properties that are near the church. Ms. Joki noted that it would depend on the amount, and of the prevailing winds and how close it is.

Vice Chair Lalwani asked if the church will have internal controls to conduct their own training session and if staff could make it a condition. Mr. Lindsay noted that the church is being required to have an emergency action plan that includes planning for the event of an emergency and training sessions. He noted that the Fire department would make sure that this happens as a result of their annual review and felt that the church will make this happen.

Commissioner Mohsin asked if the speed limit would be enforced. Mr. Lindsay replied that it is private property so the City cannot enforce speed limits in that area. Staff was not concerned about the speed of trucks because most would be coming off on the freeway, merging onto Montague, and shortly turning into the business park.

Commissioner Moshin noted that as members are turning into the driveway, a lot of people would want to park up front. She asked if staff would be restricting parking. Mr. Lindsay noted that the church will own the parcel and the roadway splits the two parcels in half. The sanctuary and the classroom buildings will have more than enough parking.

In case of an ammonia release, Vice Chair Lalwani asked if it is safer to stay inside the building or to get out and leave the building. Ms. Joki said it depends upon the amount of the release. The code requires a shelter in place plan as well as an evacuation in place plan and that is why the incident commander that is in charge will make the determination if they want people to evacuate or shelter in place. The shelter in place plan includes taking care of the people on site to take care of them and house them for a 72-hour period.

Commissioner Sandhu asked if the applicant would be serving food and Mr. Morley replied that the church will have a cafeteria but would be very minimal, unlike a restaurant.

Commissioner Galang asked Pastor Lee if the crosswalk guard services would be there until everyone leaves the facility and Pastor Lee replied, "Yes".

Chair Nitafan asked staff why they do not have the hours of operation as a special condition. Mr. Lindsay replied that staff did not include a restriction on hours intentionally as staff didn't feel it was necessary to regulate the hours and wanted the church to have flexibility with their hours and not to have it come back to the Commission. He did note that revised condition no. 4 does have restrictive hours and reads as follows:

- 4. The applicant shall submit to the city, as and when requested, evidence that a minimum of 2 adult crosswalk guards have been, and will continue to be, posted at the driveway crosswalk during weeknights (30 minutes before peak attendance activities begin and 30 minutes after such events end) as well as Sundays (from 9:30 a.m. to 3:00 p.m.).*

Motion to approve Use Permit No. UP2003-48 and adopt Environmental Assessment No. EA2003-12 with revised condition no. 4 stated above and added condition no. 20 based on the findings and conditions of approval noted in the staff report.

M/S: Galang/Giordano

AYES: 7

NOES: 0

**XI.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:30 p.m. in memory of Michael Mihalakis who was killed in Iraq.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 28, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitaфан called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitaфан, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Heyden, Karlen Lindsay, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitaфан invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Frank De Schmidt, member of Milpitas Chamber of Commerce and Rotary Club, invited the Commission to attend the upcoming Gene Schwab luncheon, honoring City Employee Lechi Nguyen on February 9th at noon at the Embassy Suites hotel. Mr. De Schmidt also noted that the Chamber of Commerce would be hosting the annual crab feed on Friday, February 27th in the Napredak Hall and everyone is invited.

**IV.
APPROVAL OF MINUTES
January 14, 2004**

Chair Nitaфан called for approval of the minutes of the Planning Commission meeting of January 14, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

There were no announcements from staff.

Vice Chair Lalwani announced that on January 15th at 7 p.m., there would be a public forum at the Milpitas library hosted by the Milpitas Democratic Club for the 20th district assembly candidates. She noted that five candidates would be interviewed by the San Jose Mercury News and the Milpitas Post and invited everyone from the public to attend.

Chair Nitaфан announced that from March 31st through April 2nd, the League of California Cities is sponsoring the Planner's Institute in Monterey. Chair Nitaфан noted that there are two slots available and extended the invitation to Commissioner Mohsin and Commission Garcia.

Commissioner Mohsin and Commission Garcia thanked Chair Nitaфан and noted that they would check their schedule and get back to staff.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item No. 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

James Lindsay, Acting Planning Manager, requested that Consent Item No. 3 remain on the consent calendar with a modified recommendation. He explained that staff and the applicant need time to work out the conditions of approval, and the applicant has agreed to a continuance so staff is recommending that the recommendation be changed to continue the item to the February 11th Planning Commission meeting and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item No. 3.

There were no speakers from the audience.

**Continue Item No. 3 to the
February 11, 2004 meeting.**

Motion to continue Item No. 3 to the February 11, 2004 meeting.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item No. 3.

***3 TENTATIVE PARCEL MAP NOS. MI2003-4 and MI2003-5:** Request for two tentative parcel maps to convert two separate parcels into four parcels at 991, 995, 1201 and 1225 Montague Expressway, located in Fleming Business Park (APNs: 086-31-058 & 059). Applicant: South Bay Development. Project Planner: Kim Duncan, (408) 586-3283. (PJ #3168) (*Recommendation: Approval with Conditions*)

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**VIII.
PRESENTATION**

Chair Nitafan introduced the Redevelopment Agency presentation by Finance Director Emma Karlen.

Emma Karlen, Finance Director, presented the financial results of the redevelopment agency financial report and annual report for Fiscal Year 2002-2003. Some of the highlights were as follows:

FY 02-03 RDA Revenue Highlights as compared to FY 01-02

- ❑ 12 % Decrease in Property Tax
- ❑ 3.2 % Increase in Sales & Use Tax
- ❑ 24.4% Decrease in Interest Income
- ❑ 11.6% Decrease in Total Revenue

FY 02-03 Expenditure Highlights

- ❑ \$10.1 million Capital outlay
- ❑ \$9.4 million debt service payments
- ❑ \$816,000 operating expenses
- ❑ \$200,000 housing fund expenses

FY 02-03 Redevelopment Activities – Project Area No. 1

- ❑ Adopted Ordinance to approve the 8th Amendment to the Redevelopment Plan
- ❑ Added 619 acres in the Midtown Area to the project
- ❑ Increased the combined tax increment limit to \$2.4 billion
- ❑ Increased bonded indebted capacity to \$498 million
- ❑ Acquisition of surplus Elmwood property from the County

FY 02-03 Redevelopment Activities – Great Mall Project Area

- ❑ Expanded its entertainment venues with a game room addition to Dave and Buster's restaurant
- ❑ Introduced Putting Edge, an indoor, glow-in-the-dark miniature golf course
- ❑ Two outstanding bond issues:
 - ❑ \$34,360,000 1997 Tax Allocation Bonds
 - ❑ \$28,935,000 2000 Tax Allocation Bonds

Vice Chair Lalwani asked if the \$1 million dollars that was transferred to the state budget was a percentage or a fixed amount from the revenue. Ms. Karlen explained that the \$1 million dollars was neither a percentage nor a fixed amount, and explained that last year, the state mandated that all redevelopment agencies transfer \$75 million dollars, and the City's share came out to be about \$1,009,000. Ms. Karlen explained that this current fiscal year, the amount has increased to \$135 million dollars, and the City's share has increased to over \$1.9 million dollars for the current fiscal year. Next year, the City will make the same projection of a \$1.9 million dollar transfer.

Vice Chair Lalwani asked why are the reports prepared six months late if the ending of the fiscal year was June 2003. Ms. Karlen explained that Finance closed the books in August 2003, and the numbers have to be audited by auditors, and the reports are completed in November and presented to City Council. The annual report is prepared in December 2003 and staff is allowed six months to prepare the reports.

Commissioner Garcia asked what would not get done because of the 11% decrease in revenue. Ms. Karlen noted that because of the City's success in increasing the tax increment limit, in the long run, the City will be able to keep receiving tax increments, so even though the City does not have as much money as last year, the City will still be able to fund all of the projects that the agency is supporting.

Commissioner Sandhu asked if the acquisition of the surplus of Elmwood property from the County is deemed complete. Ms. Karlen replied that the acquisition is not complete yet and that the transaction was negotiated the last fiscal year and the plan is to pay installments to the county.

Commissioner Sandhu asked when will work start on the Elmwood property and Mr. Lindsay noted that KB homes has submitted a proposal to build approximately 720 homes on the surplus properties and staff is expecting the public review period of the EIR in April and does not expect the project to come to the Commission until mid to late summer of this year.

Chair Nitafan noted that on the report the tax allocation bonds show the excess deficiency of revenues over expenditures are \$7.5 million dollars ending June 30, 2003, and asked if that is an indication that the City has refinanced the two bonds to reduce the deficit. Ms. Karlen explained that staff has refinanced the bonds to restructure them and to secure additional funding and when the City issued the 200 million dollar bonds, staff was able to use part of those to refund the existing bonds. She also noted that when the City issued the 2000 bonds at that time, staff didn't know how long the Redevelopment Agency would actually complete the limit, so the bonds were very short, only 8 or 9 years to construct the City Hall building. She explained that staff was successful in increasing the tax limitation so that it was advantageous to restructure the bonds to longer terms so that the annual payment would decrease. Ms. Karlen also added that the other reason staff issued the bonds was because there were a lot of redevelopment projects that will be occurring in the next few years and staff wants to secure funding for those new projects.

Chair Nitafan asked if the yield would probably go down so that the interest would be much lower. Ms. Karlen noted that on the surface, the interest would not be that much lower because the balance for the two bonds combined is \$75 million dollars, so staff issued a 200 million bond so the new debt surface would be higher annually. She also explained that staff took advantage of the interest rate being lower and had the ability to extend the bond, so the annual payment would be much higher by a few million dollars.

Chair noted that on the housing reserve, the City has a deficit of \$56,000 dollars in excess of the revenues over expenditures and asked Ms. Karlen to explain. Ms. Karlen noted that the City generated interest of \$144,000 dollars in the year and expended \$200,000 dollars, so the difference is the \$56,000 dollars. The City had to get an additional transfer from the Redevelopment agency because 20% of the tax increment that the City received was required to be set aside for the housing and so staff got \$5 million dollars, which increased the fund balance by \$5 million dollars.

Chair Nitafan asked how is the City doing financially within the last six months in terms of tax increment revenue. Ms. Karlen responded that the revenue is a little bit down compared to the year before.

IX. PUBLIC HEARING

**ENVIRONMENTAL
IMPACT ASSESSMENT
NO. EA2003-15, USE
PERMIT NO. UP2003-46
AND 'S' ZONE
APPROVAL
AMENDMENT NO.**

SA2003-135: Request to operate a child care facility in the community center of The Crossings at Montague, 757 East Capitol Avenue. Applicant *Montague Parkway Associates*.

Staci Pereira, Assistant Planner, presented Environmental Impact Assessment No. EA2003-15, Use Permit No. UP2003-46 and "S" Zone Approval Amendment No. SA2003-135, a request to operate a child care facility for up to 36 children without providing eight (8) parking spaces and associated site improvements including parking lot modifications and new exterior gated play area in the community center of The Crossings at Montague, 757 East Capitol Avenue. Ms Pereira recommended approval with conditions based on the finding noted in the staff report and also modified condition no 12 to read as follows:

- 12. Prior to building permit issuance, the plans shall indicate the location of the wind directional sock on the subject site that exceeds the height of the building and is adjacent to the child care facility. Prior to Certificate of Occupancy issuance, the wind sock shall be installed. (P, Mitigation Measure 3)*

Commissioner Galang asked if staff received any public comments and Ms. Pereira responded that staff did not receive any public comments on the environmental documents.

Commissioner Sandhu asked what is the square footage of the child care facility at the community center and Ms. Pereira responded 6,000 sq. feet.

Vice Chair Lalwani asked if the public hearing notices were mailed to industry owners or residential neighbors. Ms. Pereira responded that public noticing occurred for all property owners within 300 feet and all residential renters within 300 feet including the entire residential community of 700 to 800 residents at the Crossings who were notified. Also, the residents south of the property in San Jose were notified and the majority of the property owners are industrial businesses.

Chair Nitafan asked what types of chemicals are in the industrial area. Ms. Pereira responded that the analysis determined that 28 businesses within the quarter mile area of the facility used liquid chemicals. Ms Pereira explained that liquid chemicals are different from gaseous chemicals, which the Commission reviewed with the Korean church application on Montague Expressway at the January 14th meeting. The liquid chemicals, so long as they are stored within a closed building and handled properly, would have a far less risk of exposing sensitive receptors compared to gaseous chemicals. Ms. Pereira referred the Commission to the hazardous materials analysis and explained that liquid chemicals include stripper and cleaning solvents, alcohols, acids, basis and other compounds, which were determined at 3 of the 28 facilities in the area.

Regarding special condition no. 4 below, Chair Nitafan asked if Planning staff would be reviewing the elevations.

- 4. Prior to building permit issuance, details and elevations of the 50 square foot storage area located at the eastern end of the upper play area shall be reviewed by Planning staff to ensure consistency with the overall architecture and design of the community/recreation building. (P)*

Ms. Pereira noted that Planning staff would be receiving conceptual elevations in the plans, however, within the permit stream-lining provisions, staff has the ability to review and approve minor modifications involved in the outdoor play area.

Commissioner Moshin asked what types of procedures would be in place for the child-care facility in regards to safety, and asked if the staff would be trained in case of an emergency.

Applicant Alan Friis, 1995 West Lincoln Road, Stockton, CA, noted that Creative Child Care runs a number of institutions of child care and other facilities and they are very familiar with the licensing. He also noted that there is a note from the Fire department requiring that there is an agreement with Creative Child care and the Fire department to have a yearly inspection to demonstrate that the children and staff are trained.

Commissioner Garcia noted modified condition no. 12, and asked if staff really needs to require wind socks. In his opinion, there is not really a requirement or windborne hazard in that local area around installation. He felt that wind socks are not attractive and a signal that there are dangerous things around the area. He asked if this is one area where staff could relax on the requirements.

Ms. Pereira replied that staff could discuss it with the Fire department who required the wind sock; however, the Fire department wanted some indicator of the wind direction since there is no requirement to install an alarm or sensor. She explained that when there are gaseous chemicals in the vicinity, like the Korean church, the Fire department requires a sensor so anytime the materials are released in the air, the Fire department would be notified. She also explained that for this project, there were only liquid chemicals, so if there is a spill, the chemicals have the ability to travel and the Fire department wanted to be able to notify the surrounding uses, and in order to do that, the Fire department would have to determine if there were an upwind or down wind and a wind sock would provide the information.

James Lindsay added that given the condition of the wind sock, staff would do everything possible working with the Fire department to make sure that the wind sock is located in such a place where it is not highly visibly to passerbys and the Fire department would know where to find it.

Commissioner Giordano asked where else in the City has the City required a wind sock and Mr. Lindsay noted that to his knowledge it has not appeared in a condition of approval before. That doesn't mean that the Fire Department hasn't utilized this technique in their administration of the hazardous materials business program throughout the community, so the wind sock condition could have occurred in other locations, but not through the Planning Department. This is the first time that he could recall this type of condition coming forward to the Commission.

Vice Chair Lalwani recalled that before the Crossings were built, it was a residential area, and all of the conditions applied at that time. She asked if staff makes the conditions more difficult if a child care facility comes to a residential area. Mr. Lindsay explained that the location was taken into consideration when the apartment complex was put in, and the difference between a residential complex and a daycare center is that with a daycare center, there is a higher concentration of children and a higher child to adult ratio, whereas with a home, there is typically more of an appropriate ratio because the parents can take care of the situation such as evacuation and sheltering in place. He added that one of the requirements was to have a community warning siren installed within the complex so that it could be used to alert the residents.

Vice Chair Lalwani asked if staff requires extra conditions for people who run a child care facility at home with five to eight children and Mr. Lindsay responded "No".

Chair Nitafofan asked if staff would have any requirements for handicap parking. Ms. Pereira responded that the current facility meets the handicap parking requirements and the only difference is that the facility is being required to move about five spaces down from their current location and noted that the Fire Department has approved their relocation. She explained that it is still within close proximity to the building's entrance and the applicant proposed to shift those slightly south to provide a more safe and convenient drop off area for parents to have their children go to the door so there is no loss to the handicap parking.

Vice Chair Lalwani asked how many centers does Creative Child care have and Mr. Friis responded "Four" and noted that the Crossings only manages the complex and Creative child care is a lessee, operating out of the recreation building.

Commissioner Mohsin asked what are the parking requirements and how will it fulfill the need of the clients and the traffic. Mr. Friis replied that he doesn't see any impacts and that the basic parking for people that live in the complex is behind the gate. Mr. Friis noted that directly in front of the clubhouse there are 25 unassigned parking stalls, four of which are handicap and three spaces that will be used for staff to park outside the gate. He also noted that the parking lot is full during night hours and the daycare will not be open at that time.

Commissioner Galang asked what are the procedures to hire staff members. Mr. Friis responded that Creative Child care is licensed to manage the staff associated with the child care facility, and the Crossings have done an extensive amount of research to come up with a child care provider that has experience and availability to get the correct licensing for the type of facility, and it becomes their responsibility to do the staffing.

Chair Nitafofan opened the public hearing.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve Environmental Impact Assessment No. EA2003-15, Use Permit No. UP2003-46 and "S" Zone Approval Amendment No. SA2003-135 with modified condition no. 12 and all of the special conditions and findings noted in the staff report.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Mr. Lindsay clarified that the Planning Commission budget for this fiscal year was \$5,900 dollars for training, and to date, \$3,100 dollars have been spent from other Commission members attending training sessions, so the remaining funds is what is limiting the attendance to the Planner's Institute this year. He noted that the Council hasn't directed staff to institute any budget reductions for the Planning Commission training, and Chair Nitafan has requested that he make a request to the Finance Director and City Manager to see if there is an opportunity to enhance the budget this fiscal year to have additional members attend the Planner's Institute.

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:53 p.m. to the next regular meeting of February 11, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

February 11, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Lindsay and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Richard Lorber, 573 Sark Court, Milpitas, explained that he is getting a roof repaired and was told by staff that the 40 year composition roof does not qualify for the planned unit development. Staff explained that he could have a composition roof but it has to be tri laminate asphalt with a 7/8-inch thickness.

Mr. Lorber was concerned that only one company makes the tri laminate roof, leaving little room for competition. He noted that the Gap company has a roof that is 1/64 inch less than the 7/8-inch roof and has two layers instead of three layers, however, the top layer is thicker, which means it is more weather repellent. Mr. Lorber wanted to know why the Commission doesn't open this up for discussion to allow comparable roofs.

Chair Nitafan noted that this issue had come before the Commission before and was already deliberated on, and noted that the Commission would look at the issue again.

Frank De Schmidt, member of Milpitas Chamber of Commerce and Rotary Club, invited everyone to attend the Milpitas Chamber of Commerce crab feed on Friday, February 27th, at the Napredak Hall and also invited everyone to attend the Good Morning Milpitas business forum on Friday, February 20th at 7:30 a.m. at the Embassy Suites Hotel.

**IV.
APPROVAL OF MINUTES
January 28, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of January 28, 2004.

Under the announcements section of the minutes, Chair Nitafan noted that the sentence should be changed to read "in the Napredak Hall".

Motion to approve the minutes with the change.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, announced that Agenda Item Nos. 4, 5 and 6, related to the redevelopment of the Town Center, which includes residential units and a proposed Safeway that was originally scheduled to be heard this evening, would be continued to the February 25th meeting.

Commissioner Giordano noted that last year the Commission discussed impervious surface calculations regarding decks, and asked staff when the item will be brought again for discussion. She explained she wanted to put the item to rest so that if anything should come forward, the Commission would know how to handle it, particularly since there are two new Commissioners on board.

Commissioner Giordano also noted concerns that have been raised through a number of residents about parking issues with overcrowding and secondary dwelling units. She asked staff if there any requirements for parking when there is an additional dwelling unit added and if there could be a study for garage conversions into additional dwelling area square footage with the home. There seems to be a proliferation of cars that are coming into the area as additional residents are living in the homes.

Mr. Lindsay noted that Commissioner Giordano's request is very timely. He explained that after the CAC town hall meeting, staff has been looking at garage conversions and how to deal with the overcrowding situation and its impact on city streets. In working with the City Attorney, staff is coming forward with a series of zoning ordinance amendments to try to deal more effectively with these issues, and plan on bringing this to the February 25th meeting.

Commissioner Giordano asked what information would be brought forward. Mr. Lindsay noted that there are a series of amendments that staff is proposing such as garage conversions and redefinition of family and what is boarding.

Commissioner Giordano also thanked Frank de Schmidt for putting on the Gene Schwab event in honor of Lechi Nguyen, employee of the year. She noted that the luncheon was very well attended and also spoke on behalf of her relationship with Gene Schwab and that it was nice to see a recipient like Lechi Nguyen carry on the torch of what Gene Schwab was to the City.

Chair Nitafan noted that Commissioner Mohsin would not be attending the Planners Institute from March 31st through April 2nd, at the Monterey Conference Center and asked if there were any volunteers. Since there were no volunteers from the Commission, Chair Nitafan noted that he might be attending the Planners Institute along with Commissioner Garcia.

Commissioner Garcia noted that he was not sure if he would be attending and that he would notify staff by the March 1st deadline.

Chair Nitafan announced that the Knights of Columbus would be sponsoring an awards dinner on March 20th honoring the Firefighter, Policeman and Citizen of the Year. Chair Nitafan noted that applications for the Citizen of the Year are still wanted, and the deadline is midnight, February 25th and interested persons can contact him at (408) 934-9443 or (408) 307-9372.

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda as submitted.

**VI.
APPROVAL OF
AGENDA**

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 1, 2, 3, 4, 5, 6 and
7.**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5 and 6.

There were no speakers from the audience.

**Close the Public hearing on
Consent Item Nos. 1, 2 and
3 and continue Item Nos. 4,
5 and 6 to the February 25,
2004 meeting.**

Motion to close the public hearing on Consent Item Nos. 1, 2 and 3 and continue Item Nos. 4, 5 and 6 to the February 25, 2004 meeting.

M/S: Sandhu/Galang

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5, 6 and 7.

***1 USE PERMIT AMENDMENT NO. UA2003-24 AND "S" ZONE APPROVAL AMENDMENT NO. SA2003-145:** Request to modify an existing monument for Lifescan located at 1000 Gibraltar Drive (APN: 86-42-026). Applicant: Sign Classics. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2363) *(Recommendation: Approval with Conditions)*

***2 TENTATIVE PARCEL MAP NOS. MI2003-4 and MI2003-5** *(Continued from January 28, 2004):* Request for two tentative parcel maps to convert two separate parcels into four parcels at 991, 995, 1201 and 1225 Montague Expressway, located in Fleming Business Park (APNs: 086-31-058 & 059). Applicant: South Bay Development. Project Planner: Kim Duncan, (408) 586-3283. (PJ #3168) *(Recommendation: Approval with Conditions)*

***3 USE PERMIT AMENDMENT NO. UA2003-23 AND "S" ZONE APPROVAL AMENDMENT NO. SA2003-166:** Request to add four (4) additional panel antennas to an existing telecommunications site located behind a new building parapet at 1101 Cadillac Court (APN: 22-38-020). Applicant: Nextel Communications. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2362) *(Recommendation: Approval with Conditions)*

- *4 SITE AND ARCHITECTURE REVIEW (SA2003-12), USE PERMIT'S NO. UP2002-42, UP2003-57, UP2003-58, UP2004-1, AND UP2004-3:** A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot Safeway supermarket with the sale of all types of alcoholic beverages, a 32-seat Starbucks café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ#3153) *(Recommendation: Continue to February 25, 2004)*
- *5 USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SA2003-13):** A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ #3153) *(Recommendation: Continue to February 25, 2004)*
- *6 SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5):** A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3153) *(Recommendation: Continue to February 25, 2004)*
- *7 ADMINISTRATIVE REVIEW NO. P-AD2004-2:** A request to allow a printing business as a permitted use within the Industrial Park (MP) zoning district at 496 South Abbott Avenue (APN: 086-06-011). Applicant: Citation Press. Acting Planning Manager: James Lindsay, (408) 586-3274. *(Recommendation: Approval)*

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 7:18 p.m. to the next regular meeting of February 25, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

February 25, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Faubion, Heyden, Lindsay, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

Rob Means, 1421 Yellowstone, stated that there are a lot of things in Milpitas to like. He noted that a customer of his, who lives in Newark, frequents the inexpensive theaters at the Town Center and was concerned that the City might be building a grocery store there.

Minjhing Hsieh, 1320 Crossgates, San Jose, on Behalf of Tzu Chi Foundation, thanked the City planning department for their work to have Tzu Chi foundation project locate at McCarthy Boulevard. Mr. Hsieh noted that Tzu Chi foundation is a philanthropic organization that has been located in the City since 1998. Recently the foundation wanted to expand its community services to a larger scale in a research and development building located in an industrial area, and applied for a CUP to improve a variety of services and among those services were a preschool and daycare center.

Mr. Hsieh explained that the organization did its best to seek the approval of the City; nevertheless, after reviewing the City's recommendation and consulting with environmental consultants and experts, Tzu Chi foundation determined that children's safety was a very important concern for the City and the foundation. On the other hand, preschool and childcare is a very integral part of Tzu Chi's future and without it, Tzu Chi cannot achieve their goal. Based on that and all the consultation and data, it is not a very wise decision to have a preschool and childcare in the industrial district therefore, Tzu Chi has withdrawn the CUP application and also the purchase deal with the childcare. Mr. Hsieh expressed his sincere appreciation with the City and with the planning department for all their effort and looks forward to working with the City in the future that would better serve the spirit of the foundation.

Chair Nitafan noted that the Commission respects Tzu Chi's decision and wish them luck in future projects.

William Connor, 1515 N. Milpitas Boulevard, noted that he attended the BART meeting and the subject was magnetic levitation. He noted that magnetic levitation has been passed through the House and the Senate.

Regarding Agenda Item No. 3 (Site and Architecture Review (SA2003-12), Use Permit's No. UP2002-42, UP2003-57, UP2003-58, UP2004-1, AND UP2004-3), Mr. Connor noted that the City should try and buy this piece of property from Shapell since it would be a definite asset for the future and suggested delaying these items as long as possible.

IV.
APPROVAL OF MINUTES
February 11, 2004

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of February 11, 2004.

Motion to approve the minutes as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

V.
ANNOUNCEMENTS

James Lindsay, Acting Planning Manager, noted that if anyone from the audience is attending the meeting for Agenda Item No. 3 (Site and Architecture Review (SA2003-12), Use Permit's No. UP2002-42, UP2003-57, UP2003-58, UP2004-1, AND UP2004-3), town center remodel project, it will not be discussed until the March 10th meeting.

Vice Chair Lalwani reminded that the Milpitas Chamber of Commerce is hosting a crab feed at the Napredak Hall at 5:30 p.m. on February 27th and everyone is invited.

Commissioner Giordano noted that she attended the Silicon Valley manufacturing group housing luncheon on February 18th at West Valley college. She explained that it was very informative and the essence of the discussion was centered on Oakland's Fruitvale transit village district around BART. The project began in the early 1990's and was developed over the next 13 years. Mixed uses were allowed and higher residential densities of 70 units of dwelling per acre, which reduced the parking by ½ space per unit. Commissioner Giordano encouraged the Commission to attend the luncheons that are held four times a year and asked staff to follow up and make sure that all of the Planning Commissioners are registered with the Silicon Valley manufacturing groups distribution list.

Chair Nitafan announced that the 2004 Milpitas Citizen of the year application is still open and the new deadline is February 27th at midnight. Interested persons can request an application from Chair Nitafan at (408) 934-9443 or (408) 307-9372.

VI.
APPROVAL OF
AGENDA

Chair Nitafan called for approval of the agenda.

Mr. Lindsay advised that no action is needed for Agenda Item No. 1 (Use Permit No. UP2003-56, 'S' Zone Approval Amendment No. SA2004-5 and Environmental Impact Assessment No. EA2004-2) since the application has been withdrawn.

Motion to approve the agenda as amended.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 3, 4, 5, 6 and 7.**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Vice Chair Lalwani requested that Agenda Item No. 1 be added to the consent calendar.

Mr. Lindsay noted that no action is required on Agenda Item No. 1 so it does not need to be added to the consent calendar.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4 and 5.

There were no speakers from the audience.

**Keep the Public hearing
open and continue Consent
Item Nos. 3, 4 and 5 to the
March 10, 2004 meeting.**

Motion to continue Consent Item Nos. 3, 4 and 5 to the March 10, 2004 meeting.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3, 4, 5, 6 and 7.

***3 SITE AND ARCHITECTURE REVIEW (SA2003-12) USE PERMIT'S NO. UP2002-42, UP2003-57, UP2003-58, UP2004-1, AND UP2004-3** *(Continued from February 11, 2004)*: A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot Safeway supermarket with the sale of all types of alcoholic beverages, a 32-seat Starbucks café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ# 3153) *(Recommendation: Continue to March 10, 2004)*

***4 USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SA2003-13)** *(Continued from February 11, 2004)*: A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ# 3153) *(Recommendation: Continue to March 10, 2004)*

***5 SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5)** *(Continued from February 11, 2004)*: A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 3153) *(Recommendation: Continue to March 10, 2004)*

***6 HOLIDAY PARKING REVIEW (AD2004-3) FOR USE PERMIT (NO. 1166) AMENDMENT NO. UA2002-4**: Holiday parking review for the Great Mall Shopping Center, as part of the use permit for a parking modification (APN: 086-24-055). Applicant: Milpitas Mills Limited Partnership. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Note receipt and file)*

***7 “S” ZONE APPROVAL AMENDMENT NO. SA2004-8:** A request for approval to utilize side yards as part of the required rear yard open space for a property located at 466 Donahe Drive within the R1-6 Zoning District. (APN: 028-14-050). Applicant: Frank Ho. Project Planner: Cindy Hom, (408) 586-3284 (*Recommendation: Approval with Conditions*)

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2004-1 AND ZONE TEXT AMENDMENT NO. ZT2004-1 (Ordinance No. 38.763) (Staff Contact: Staci Pereira, 586-3278)

Staci Pereira, Assistant Planner, presented Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). Ms. Pereira explained that the City has prepared a Negative Declaration for Ordinance No. 38.763, which proposes to modify the following provisions as they relate to single-family dwellings:

- ☐ Remove the maximum number of unrelated persons that can occupy a dwelling
- ☐ Require all occupants to function as a single housekeeping unit
- ☐ Provide a definition for single housekeeping unit
- ☐ Require two parking spaces to be enclosed within the garage and permanently maintained
- ☐ Expand the definition of a kitchen
- ☐ Modify the location of the legal notice postings from the project vicinity to the project site

Ms. Pereira also noted the following addition to the proposed changes:

*53.23-1(2) Parking Schedule for Residential Land Uses
Boarding houses, dormitories, sororities and fraternities – 1 sp/room.*

Based upon staff’s findings and recommendations noted in the staff report, Ms. Pereira recommended the Commission recommend to the Council adoption of the Negative Declaration EA2004-1 and adoption of Ordinance No. 38.763 for amendments to the Zoning Ordinance Text ZT2004-1.

Commissioner Garcia thanked staff for what the Community Advisory Commission (CAC) found to be tough issues such as 1) Complaints about crowded houses in neighborhoods 2) Complaints about parking in neighborhoods and 3) Concerns about street sweeping since people do not move their cars, the streets are not kept up which leaves to flooding issues. Commissioner Garcia asked staff how the definition of family would be enforced.

Ms. Pereira explained that the definition of family requires unrelated persons function as a single housekeeping unit. When the code enforcement division visits homes, staff will notice if the home it is not operating as a single housekeeping unit. Code enforcement will notice if there are locked internal doors, compartmentalized kitchens or bathroom and will enforce the regulations and consider it a renting of rooms without internal access.

Commissioner Garcia asked if a code enforcer will be entering the house and Ms. Pereira responded "Yes" and noted that code enforcement receives calls from neighbors in the area who report overcrowding.

Commissioner Garcia asked what will the topic be for the next phase of ordinance amendments. Ms. Pereira explained that staff broke up phase 3 into Phase 3a and Phase 3b. The Commission is reviewing Phase 3a tonight because of the importance of the issues and phase 3b, which has about 40 to 50 amendments, will be brought to the Commission in the next three to four months.

Commissioner Sandhu noted that there were no comments for the environmental document and asked staff if the project was noticed to the public. Ms. Pereira noted that the environmental document was recorded and posted with the county and staff did not receive any comments. The project was also advertised in the *The Milpitas Post* as a public hearing; however, each individual resident in the city was not notified.

Commissioner Sandhu asked if the definition of family defines how many people could live in a home and Ms. Pereira noted that because of state and federal law, staff cannot limit the number of unrelated people that occupy a dwelling unit. There could be several people living in a home, however, staff felt that the recommended amendments to the ordinance will assist staff in curbing the overcrowding situation by requiring additional parking spaces and by requiring residents to function more like a traditional family as well as prohibiting full garage conversions. Staff had to change the definition of family to be consistent with other laws and also to strengthen the existing ordinance in order to give regulatory purview within the single-family residential area.

Commissioner Giordano noted that this was a lot of information to review and in response to Commissioner Garcia, Commissioner Giordano knew that these issues had been brought up at the CAC town hall meeting and asked if staff had put any thought to having the CAC review the amendments before coming to the Commission.

Ms. Pereira responded that the CAC will be reviewing the amendments at the March 3rd meeting and explained that the CAC was supposed to review the amendments at the last meeting but didn't get to it.

Commissioner Giordano asked if the Commission will be making the adoption tonight or should wait for CAC's input. Ms. Pereira noted that the Commission will be making a recommendation to the City Council and any input from the CAC will also be considered and forwarded to the City Council.

Commissioner Giordano was concerned that no one from the public was addressing the proposed ordinance amendments and asked where was the ordinance advertised. Ms. Pereira responded that staff did the required advertising in the paper, just as any public hearing, and did not advertise to each individual resident within the city.

Tambri Heyden, Acting Planning and Neighborhood Service Director, noted that in conjunction with the CAC, staff has done additional advertising. She noted the amendments were displayed in *The Milpitas Post* for the CAC meeting on February 18th and given the items on the agenda, the CAC decided to defer the item to the March 3rd meeting.

Ms. Heyden commented that it is the Commission's benefit to have Commissioner Garcia now, because he is a helpful link from the work that was done by the CAC in getting the phase 3a amendments addressed. The CAC has a subcommittee working on these issues contributing to the problem such as street sweeping and parking. The whole focus of the October town hall meeting was just this issue, and staff did out of the ordinary publicity for the town hall meeting and people still didn't get out.

Commissioner Giordano noted that she is in favor of tabling this item to a follow up meeting until it has been passed through the CAC, and would like to see staff's homework in terms of what other cities are doing.

Ms. Pereira explained that staff had input from city attorneys as well as research gathered from other cities and noted that staff did not include the information.

Commissioner Giordano noted that staff is limiting secondary family units to one bedroom and one kitchen and noted that the size of the valley floor is 475 square feet and the hillside is 1,200 square feet. She asked staff if secondary family units have always been 1 bedroom.

Ms. Pereira explained that staff is not making any changes to secondary family units. The change was made and adopted with the past zoning ordinance amendments that came to the Commission less than a year ago and has always been one bedroom and one kitchen.

Commissioner Giordano didn't understand why a 2 bedroom wouldn't be allowed and asked staff to bring back information to the next meeting.

Commissioner Giordano asked if a resident has a 4 bedroom home and wants to rent out 3 out of the 4 bedrooms, is that considered a boarding house. Ms. Pereira explained that if the resident rents out 3 of the 4 bedrooms and functions as a family, or as a single housekeeping unit, there are no limits. The limit is to function as a single housekeeping unit and by that, there are certain regulations that will assist in preventing overcrowding.

Commissioner Giordano asked what would the regulations be if a resident has a 3-bedroom house and wants to rent out 2 rooms. Ms. Pereira noted that the City does not have the ability to regulate the number of rooms or the number of people that occupy a single family residence, that is state and federal law, so as long as they are operating as a single housekeeping unit.

Commissioner Giordano mentioned that things are not clear and is not sure how staff moved from point A to point B. Regarding garage conversions, she asked staff where they came up with the idea that only half of a garage could be converted.

Ms. Heyden noted that Commissioner Giordano is making a good point and noted that the issues were studied with other cities and that staff could come back with more research from what other cities are doing.

Commissioner Giordano noted that if you have 2 parking spaces onsite and 1 parking space must be covered, that is a huge deviation from where the City is now. She asked where is the rationale that if a garage is converted and you have a space left in the driveway and you have uncovered parking. Ms. Pereira noted that staff researched five other local cities, and found that 4 out of the 5 require both parking spaces for single family dwellings to be enclosed or covered, thereby preventing garage conversions altogether. The City of Milpitas was one of the only cities in the immediate area that permits garage conversions, so when looking at the other cities, staff did an analysis and thought that they could require both parking spaces to be enclosed or covered, however, that existing homes would be impacted by not meeting the dimension requirements and that would render them all non conforming, so staff thought perhaps requiring only one of the parking spaces to be covered would prevent the entire garage of being converted, but at the same token, not rendering a lot of homes non conforming.

Ms. Lindsay added that, of the documents that were provided, the city attorney's memo describes the bulk of the changes. The information presented this evening has supplemented that. Staff surveyed what other cities were doing about garage conversions and determined what could work well within Milpitas and came up with the one parking space that must be covered. In looking at the type of garage conversion applications that come across our desks, it would not allow a garage to be used as a rental opportunity.

Commissioner Giordano asked if there is a time constraint, and suggested postponing this item to the March 24th meeting.

Chair Nitafan commented that he is concerned that the CAC would review the item after the Planning Commission. He noted that the Planning Commission is the sole approving body of any items that go before City Council. He asked Attorney Faubion to clarify the procedure process.

Attorney Kit Faubion explained that planning and zoning law requires that the Planning Commission review zoning ordinance amendments at a public hearing and provides recommendation to council. There is nothing in the zoning law that addresses a CAC or similar kind of commission.

Ms. Heyden clarified that there is a CAC subcommittee called the neighborhood preservation subcommittee that is working on the larger issue of overcrowding of neighborhoods, and noted that the subcommittee is just not far along in their efforts to identify this as a potential solution. She explained that it has been difficult in terms of code enforcement to be effective in addressing some of the complaints that have been received regarding homes that are not operating as a single housing keeping unit. Staff felt the need to make this more of a priority because legal staff has advised that the definition of family is not consistent with state and federal law and needed to be updated. Staff also had another effort with a consultant that is preparing a report regarding impediments to fair housing and the consultant has also identified the definition as a problem with the zoning code.

Ms. Heyden explained that the subcommittee has not gotten far in their efforts to take ownership of the zoning amendments. Because it relates to the work they are doing, staff felt the need to bring them into the fold and let them know what staff was working on so they could be advised of how this might help the issues that have been identified through the subcommittee. In terms of timing, staff could certainly slip another meeting or another month, but staff does need to get the definition of family resolved right away because the definition is not legally enforced.

Regarding second family units, Ms. Heyden pointed out that she is not sure how much energy should be spent looking at it and recalled that the last time the amendments came forward, it was one of the most significant amendments and was prompted by a Bill that had been passed that required all cities amend their zoning ordinances to deal with second family units. Ms. Heyden pointed out that the Bill was quite specific and not sure if the can of worms should be opened.

Commissioner Galang asked staff to clarify the definition of a single-family dwelling. Ms. Pereira explained that it is defined as a detached building designed exclusively per occupancy by one family for living purposes and having only one kitchen.

Commissioner Galang asked what is the minimum number of bedrooms allowed for single-family and Ms. Pereira noted that the City does not regulate the number of bedrooms for single family.

Commissioner Galang asked what are the regulations if you are adding one bedroom in the backyard instead of in the car garage. Ms. Pereira responded that there are regulations in terms of lot coverage, setbacks, size of main residence, and there are other provisions of development standards in place that control the degree of an addition.

Commissioner Galang asked how the definition of boarding houses and dormitories is classified. Ms. Pereira responded that the definition of a boarding house is a building other than a hotel that provides meals and lodging for compensation. An example would be a bed and breakfast, sorority house, or paying rent and getting meals and room in exchange.

Vice Chair Lalwani asked if staff would be providing the Commission a copy of the PowerPoint presentation and Ms. Pereira responded, "Yes".

Vice Chair Lalwani asked how will staff find out if a resident has converted their garage. Ms. Pereira pointed out that there is additional language added to the parking section of single family that does not affect any garage conversions that were permitted or approved prior to the effective date of the ordinance. So if somebody came to the counter with a plan check to convert their garage, staff could not approve it from that date forward. In addition, if anybody had a garage conversion and it was witnessed in the field and it was not permitted, it could not be approved.

Vice Chair Lalwani pointed out that the current regulation states that an entire garage can be converted into living space and cannot contain a second family unit and asked staff if it is legal if there is a second family unit currently inside a garage. Ms. Pereira replied that she wasn't sure if the last ordinance amendment, which modified the second family units, if the limitations to be in the garage was part of the previous amendments or was added later.

Vice Chair Lalwani stated that this could be enforced only if someone reports this information to the City, because there is no way to know what people are doing.

Ms. Pereira noted that the City could find out either from complaints or as inspectors go out and perform routine inspections.

Vice Chair Lalwani commented that she was distributing Measure B fliers and saw a garage opening up and there was a living room in the garage. She commented that it seems that the owners are renting out the rest of the house and living in the garage.

Ms. Pereira commented that she is not confident that prior to the last amendment if it introduced the limitation of second family and single garage, or if it was permitted prior.

Ms. Heyden pointed out that staff receives complaints all the time through a hotline. Staff checks the address and checks permit records to see if the garage was permitted in any way, as either a second family unit or as expanding the bedrooms of the house. If it has been permitted than it has been legalized, if it hasn't been permitted then it is in violation. Ms. Heyden noted that sometimes it is pretty obvious as construction is going on and you see activity.

Commissioner Mohsin mentioned her concerns that if people are renting out three bedrooms in their house and they have four bedrooms it would cause parking problems in the neighborhood. Ms. Pereira agreed and noted that the City does not have the ability to regulate that type of living situation and is unable to control the number of cars and the number of people per house.

Commissioner Mohsin noted that CAC has been addressing the parking issue and asked if staff could address the issue as well.

Ms. Heyden explained that the neighborhood preservation subcommittee needs to continue with their efforts to find out the root cause of the problem. There could be families that are large, and if they have children of driving age, you can easily have four vehicles parked in your driveway or spilling over onto the street, so staff can not discriminate against how many people are living as a family and the impact that they have based on the number of vehicles that are necessary for the family.

Ms. Heyden explained that this is standard across the country in terms of number of parking for single-family dwellings and wouldn't think of increasing the ratio, however, she noted that this is something that will come back as the CAC subcommittee looks further into their study.

Mr. Lindsay explained that in relation to garage conversions, there is a double impact because you are losing parking spaces and increasing bedroom count, and what staff is suggesting is to add one additional parking space to the two minimum already required. So for an existing single family home, you have four parking spaces, traditionally, two covered and two uncovered, and in the current regulations, you can eliminate two of them, under the proposed regulations you could only eliminate one. So we are trying to make an attempt to increase the parking availability on the site so there is less impact on the street.

Commissioner Mohsin asked if it is safe to have half of the garage converted by having half a living space and the other half occupied by a car.

Mr. Lindsay explained that it would have to be separated by the building code because there are different occupancy requirements and there are actually separation walls that are needed because of the type of materials that are in a garage. You have to maintain a solid separation or fire wall between the two because of the materials that are typically associated with vehicles such as oils and gases.

Commissioner Mohsin asked what has been done with the observations that staff has picked up.

Ms. Heyden noted inspectors have canvassed the neighborhoods to observe how many garage conversions they've seen and have not taken this further yet to the next step to actually inventory them and compare them to records to see how many of them have been permitted. It's possible that the garages were permitted, but because the current language is difficult to enforce, staff wanted to sink their teeth into it first and then go forward with the efforts and take up other parts such as street sweeping and parking. This is a big issue and staff has already been working on it for six months and could probably take another year.

Commissioner Mohsin requested that if there is a PowerPoint presentation, that staff provide the Commission with copies to follow up with questions.

Commissioner Giordano commented that she wants to see information brought back such as matrixes and what other cities are doing, and understand how staff came up with conclusions. She would like to see staff's homework on the garage conversion issue because she is confused on how staff came up with only half of the garage converted. She also wants to see research done on why there is limitation to one bedroom in the secondary family units and look at expanding the bedroom count, and also how staff determined that only 1 bedroom is allowed on a 1200 square foot secondary dwelling unit.

Commissioner Garcia strongly supports delaying action until staff gets feedback from the CAC. He mentioned that the issue has been on the burner for the CAC and thinks that it is great for the citizens of Milpitas to have 3 opportunities to talk about this issue – Planning Commission, CAC, City Council-because it is a big change and input is needed.

Commissioner Galang asked if a permit is needed to start construction to convert half of a garage. Ms. Pereira responded that building permits are required for any interior modification to a home when it relates to new walls, electrical and plumbing, which would all be associated with a conversion of a garage.

Commissioner Galang asked why is staff allowing only half of a garage and asked what will be going on with the other half. Ms. Pereira pointed out that rather than allowing only half a garage to be converted staff is increasing the parking requirements for the single-family dwelling. Before it was two, now it's two but one must be covered. In doing so, you prevent the entire garage from being converted to additional rooms. Additional rooms add to more overcrowding and adds to more parking spaces, so that was staff's attempt to curb the whole garage conversions entirely. Staff had researched other cities, and the majority 4 out of 5, require those spaces to be enclosed. Staff thought that was a bit much and wasn't sure of the existing homes out there that would be unable to meet that and therefore be rendered non conforming, so staff considered the requirement of one of them to be covered, which is also consistent with the city of Campbell.

Attorney Faubion explained that the intent of staff in including the garage conversion language in the chart is more descriptive and not regulatory. It just indicates what the result would be if this regulation were adopted, and in all likelihood, people aren't going to convert half of a garage, and that is the point, that they aren't going to, and that is what the goal would be for these regulations, but if there is a requirement for one space to be covered in a garage, the more likely happening is the existing living space would be expanded into that rest of the garage, so you wouldn't have the garage doing anything but you would have the existing living space more than likely just expanding into that and more than likely subject to all of the regulations of building and fire walls.

After hearing all of the comments, Chair Nitafan concluded that additional information is necessary to adopt the ordinance.

Chair Nitafan opened the public hearing.

Rob Means, 1421 Yellowstone, commented that the large car problem presents more traffic, congestion, and parking problems. He felt there were too many people in one house. Mr. Means recalled that putting in an alternate transportation system that people can use so they don't have to drive their cars would be better than restricting affordable housing. Mr. Means explained that he knew a couple that were living in a 3-bedroom house and did not use all of the bedrooms. The couple tried renting out a room but it didn't work out, so what they did was section off the back end of the house where they had the master bedroom, plus they used more space from the other bedroom and the master bathroom and put in an exterior entrance and made that an exterior living room unit. The couple hesitated doing that because of rules and regulations, and the rule used to be that second units could be on a corner lot, and the couple wasn't on a corner lot. A former planning commissioner told the couple that as long as there is not a kitchen facility then they could escape the rules. So basically, the couple created affordable housing and did it under the radar. Mr. Means pointed out that under the proposed regulation, the same situation would no longer be legal.

William Connor, 1515 N. Milpitas Boulevard, noted that he was out walking for measure B, and noted that it was interesting because the paperwork had everyone's house number on it and the number of people that were living in the house. He also noted that there were about 4 or 5 cars in front of a house. His point was that he got the information from the county of registered voters and there is a registry of how many people do live in a house, but it is only those who are registered to vote. He questioned if are we losing votes because people do not want to register to identify that a house is over multiplied. He also mentioned his concerns that he drives through some of the neighborhoods at night and in some of these sections, it is bumper to bumper. At 6 a.m. in the morning the cars start to dissipate and at 11 p.m. the cars are collected.

Frank De Schmidt, member of the Chamber of Commerce and member of the economic development commission, noted that he receives the Planning Commission agenda and for the brief summary on Agenda Item no. 2, he did not see any information on garage conversions.

He commented that if staff wants public input and the garage conversions inadvertently got left off of the brief summary, the media wouldn't know about it if the media did a report and a story on this issues. He noted that his experience with ordinances and the quest for public input works this way. If you have the Commission offering a recommendation, maybe before that, a public hearing with the CAC or a town meeting. Then the Council gets it and they have a first reading, then you get a big crowd on the second reading. That's what his experience has been, everyone shows up at the last meeting. So he suggested that staff might want to do a separate mailing to the people that might be affected by this.

**Keep public hearing open
on Agenda Item No. 2**

Chair Nitafan noted that the public hearing will remain open since the item will be continued.

Commissioner Sandhu noted that he likes the idea that the public should be notified about this hearing because he doesn't think people know about the ordinance.

Commissioner Giordano didn't think it was logistically possible to send out notices to everyone in the city.

Mr. Lindsay noted that staff will create a display ad within *The Milpitas Post* that hits a larger audience than the legal ads do.

Motion to continue Agenda Item No. 2 (Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763) to the March 24th meeting and for staff to get input from the CAC and bring back more information.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**IX.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:22 p.m. to the next regular meeting of March 10, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

March 10, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Duncan, Heyden and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
February 25, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of February 25, 2004

Commissioner Giordano noted that on page 11, her comments should be changed from "a 1 bedroom is allowed on a 1,200 square foot max addition" to "a 1 bedroom is allowed on a 1,200 square foot secondary dwelling unit".

Motion to approve the minutes as noted.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Vice Chair Lalwani arrived at 7:02 p.m. and seated herself at the dais.

**V.
ANNOUNCEMENTS**

There were no announcements from staff.

Vice Chair Lalwani thanked staff for travel arrangements for the three Commissioners who attended the Role of the Planning Commissioner class at Sacramento UC Davis and noted that the class was very informative.

Veronica Rodriguez, Recording Secretary, noted that she left a copy of the updated zoning ordinance amendments to the Commission and that she could insert them into their Municipal code books if they bring their books to the next meeting.

Commissioner Giordano thanked staff for providing the Community Advisory Commission (CAC) minutes and the CAC agenda and noted that the March 3rd agenda item that was requested by the Commission for the zoning ordinance amendments and asked staff what were the recommendations.

Tambri Heyden, Acting Planning and Neighborhood Services Director, explained that the CAC requested an amendment to the wording that was prepared by staff that related to defining what covered parking meant and the number of covered parking spaces, one versus two, and delegated review of the revised wording to their subcommittee (which occurred the following day).

Commissioner Giordano asked if the Ethics Steering Committee has set dates for the community workshops. Ms. Heyden replied that the meetings would be held on March 31st, April 7th, April 23rd (correction made to April 22nd by Tambri Heyden) and May 5th, and that the Commission should be receiving a flier via e-mail or mail and all Commissioners are invited to attend and participate.

Commissioner Giordano announced that the Milpitas Unified School District and the Milpitas Foundation for Education is hosting a crab feed on Friday, March 19th at 6 p.m. at the Napredak Hall. The price is \$35 dollars and tickets are available at the Milpitas Post, Sushi Lovers, Milpitas school offices, Milpitas district office and Logos Etc. 100% of the profit will be for classroom supplies.

Commissioner Galang announced that the Filipino Dental Practitioners of California Inc. will be holding an inaugural dinner and ball on Saturday, March 20th at the Marriott hotel in Burlingame. He also thanked staff and taxpayers for sending him to the Role of the Planning Commissioner class at UC Davis in Sacramento.

Commissioner Sandhu announced that Bob Livengood has appointed him to the subcommittee that has been formed to honor Martin Luther King.

Chair Nitafan was happy to announce that Marilyn Hay was selected as the Milpitas Citizen of the Year, Henry Dekruyff was selected as the Police Officer of the Year and Steven King was selected as the Firefighter of the Year. The winners will be honored at an awards dinner and dance on Saturday, March 20th at the community center and cost is \$20 per person. For all of those that want to attend RSVP by March 18th.

Chair Nitafan announced that the Santa Clara County Chamber of Commerce Coalition is hosting a second legislative summit on the economy and business at the Santa Clara Convention Center on Friday March 19th from 11:30 to 1:30 p.m. and the cost is \$35 dollars per person. He explained from the flier that the purpose of the summit is to foster a better understanding about the needs of Santa Clara county businesses and to promote a strong economic recovery with cooperation and compromise. The summit will provide the opportunity for regional chambers to express their top business issues and to hear from attending elected officials to express their top business issues. Officials such as Congresswoman Zoe Lofgren, Senator Bruce McPherson, Senator Bryon Sher, Assemblyman Manny Diaz, Assemblywoman Sally Lieber, Assemblywoman Rebecca Cohn and Assemblyman John Dutra will be attending.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 2, 3, 4 and 5**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 4 and 5.

There were no speakers from the audience.

**Close the public hearing on
Consent Item No. 2 and
keep the public hearing
open on Consent Item Nos.
3, 4 and 5 to the March 24,
2004 meeting.**

Motion to close the public hearing on Consent Item No. 2 and keep the public hearing open on Consent Item Nos. 3, 4 and 5 to the March 24, 2004 meeting.

M/S: Lalwani/Galang

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4 and 5.

***2 USE PERMIT AMENDMENT NO. UA2004-3 AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-12:** Request for a new 15-foot tall freestanding sign to replace an existing monument sign for the Shell Gas Station located at 900 Jacklin Road (APN: 028-05-017), zoned Highway Service. Applicant: Arc, Inc. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2364). (*Recommendation: Approval with Conditions*)

***3 SITE AND ARCHITECTURE REVIEW (SZ2003-12), USE PERMIT'S NO. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1.** (*Continued from February 25, 2004*): A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot supermarket with the sale of all types of alcoholic beverages, a 32-seat Coffee café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ #3153) (*Recommendation: Continue to March 24, 2004*)

***4 USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SZ2003-13)** (*Continued from February 25, 2004*): A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ #3153) (*Recommendation: Continue to March 24, 2004*)

***5 SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5)** *(Continued from February 25, 2004):* A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3153) *(Recommendation: Continue to March 24, 2004)*

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

Kim Duncan, Junior Planner, presented Use Permit No. UP2003-59 and Environmental Impact Assessment No. EA2004-3, a request to operate a religious facility that includes religious study and worship in a vacant 61,122 square foot research and development building located in the Dixon Landing Business Park, zoned Industrial Park (MP), at 1494 California Circle and recommended approval with conditions based on the findings and special conditions noted in the staff report.

Commissioner Galang asked how would staff address a serious gas leak.

Daniel Hernandez, Environmental Consultant, explained that if a 10,000 gallon tanker truck filling empty tanks had lost integrity and a leak goes unmitigated for an hour, it would form a large enough evaporating pool that would have offsite consequences at a fairly great distance, that might even leak into a residential area. Mr. Hernandez explained that the likelihood of that event happening is judged to be improbable, if not impossible, primarily because of the multiple failures involved in that kind of release such as operative failure, mechanical failure, failure to shut off, and/or failure of the Fire Dept. to react to an emergency response.

Commissioner Galang asked for clarification on Mitigation No. 3 that reads below, and asked who is in charge of training for annual fire drills.

(Mitigation Measure 3) The applicant shall prepare, to the satisfaction of the City's Fire Department, a Plan for the site, which recognizes the nature of risks at the project site and in the industrial area surrounding the project site. Such a plan shall describe the evacuation/shelter-in-place programs and all related emergency procedures. The Plan shall include measures to protect personnel who are on facility premises, both inside and outside buildings. This plan shall also include emergency supply provisions for a time period as determined by the Fire Department. The development of the plan is the responsibility of the applicant and shall be approved prior to building occupancy. Proper implementation of this plan on an on-going basis shall be achieved by the property owner, to the satisfaction of the City's Fire Department, by submitting proof, on an annual basis, which indicates training, annual drills, and outreach have occurred. (P,F)

Ms. Duncan responded that a representative from the Fire Dept. is not available, however the applicant will be required to have inspections annually, and annual updates for the emergency preparedness plans would be required.

Commissioner Giordano asked if there is a timeline related to phase I and phase II of the project and Ms. Duncan replied that phase I will start immediately and phase II will begin as time permits.

Commissioner Giordano asked if the applicant would have to return to staff when phase II begins and Ms. Heyden replied that the applicant will not need to return because phase II is included under the use permit approval and their application is vested with the completion of phase I.

Commissioner Giordano noted that right under the table on page 2, there is a sentence that reads, "the project will not be operated as a school", and asked if staff was concerned that a school might be added at a later time. She noted that at her church, there is a preschool and asked if the applicant would have a problem if they were to add a school.

Ms. Duncan replied that the zoning ordinance defines a school as a facility that teaches classes that deal with the California State Dept. of education, therefore a school is not included for this proposal. As far as a preschool, it does not fall under the definition of a school.

As far as a preschool is concerned, Commissioner Giordano asked if the applicant would have to get a permit and Ms. Heyden responded, "Yes", and that the applicant would have to apply for a Use Permit Amendment.

Commissioner Giordano noted that 299 parking spaces were approved initially, and with the parking matrix set up now, the applicant needs 203 parking spaces, and asked staff for clarification. Ms. Duncan noted that when the building was constructed it was based on industrial uses, which is a different requirement, so the existing parking spaces were 299. The parking required for build out of the church is 199 spaces, so the applicant has 100 spaces more than is required for parking for peak demand at build out.

Commissioner Giordano wanted to understand how staff came up with the 199-space requirement since sanctuaries, classroom and offices are part of the use and questioned the one space per classroom under the parking ordinance requirement. Looking at the proposed use of the church, she noted that there will be bible studies, evening bible studies and Korean bible studies and asked staff to explain the one space per classroom since the rooms would be filled with adults for bible studies.

Ms. Duncan noted that parking requirements for religious facilities are spelled out in the zoning ordinance, and for religious facilities it is one space per five seats for sanctuaries and one space per classroom (or one space per 500 square feet of classroom), which add up to the total parking requirements for the project.

Ms. Heyden added that she is not sure whether the zoning code specifies the age of the children in the classrooms or if it is a different ratio and noted that the Commission may want to make a recommendation to staff that the one parking space per classroom for religious facilities may need to be looked at further.

Dennis Carrington, Senior Planner, noted that typically, the reason why there is one parking space per classroom is for the teacher, and that is assuming that it is for Sunday school and the kids will be brought to church. He also explained that during other times of the week when there is adult bible study, there are no services, so the use in the sanctuary would be very low.

Commissioner Giordano commented that from a broader view, it seems like the requirement is not dealing with students in classrooms, and felt that staff may want to look at this issue further. She is not going to challenge the parking ratio because there is at least 100 parking spaces available, however, she suggests that staff review how the one space per classroom was determined.

Ms. Heyden noted that staff would take a look at the issue.

Commissioner Garcia noted that while adding up the numbers in the application, he didn't come up with the 61,000 feet, so he presumed that the entire facility will be used up by the church and Ms. Duncan noted that Commissioner Garcia was correct.

Commissioner Garcia asked what happens to the tax base of the community when industrial facilities are now made into churches since there have been several church applications that have come through the Commission, he asked what is happening to City revenue. Ms. Heyden noted that it has not been analyzed comprehensively and non-profit organizations, if qualified under the tax laws, are exempt from paying taxes. That is a benefit that the City doesn't receive with that kind of use.

Commissioner Garcia asked if property taxes are still being paid and if this is a purchase or a lease. Ms. Heyden replied that it is a lease and City would still be getting property taxes

Commissioner Garcia pointed out that the City would not be getting revenue from sales for non-profit organizations.

Vice Chair Lalwani noted that Everlasting Private foundation is leasing the building to Living Word Baptist Church and asked if this is a lesser/lessee relationship or if both organizations independent from one another. Ms. Duncan noted that Everlasting Private Foundation is the property owner and the religious facility is Living Word Baptist Church.

Vice Chair Lalwani asked if Everlasting Private Foundation is a non-profit foundation and Ms. Heyden replied that she wasn't sure and that if there is a representative from Everlasting Private foundation, they could answer whether they fall under the tax law classification.

Vice Chair Lalwani asked if the other buildings in the vicinity are industrial offices or mostly vacant offices. Ms. Duncan replied that the offices are some R & D, and a few vacant buildings and there is also a hotel across the street.

Commissioner Mohsin asked if there is a time limit on how long the applicant would take to develop phase II. Ms. Duncan replied that once a use permit is secured, the applicant has up to 18 months to exercise the approval. The exercising can come in the form of pulling building permits, laying a foundation and recording entitlements. Once the applicant meets the requirements, the use permit is validated and runs with the land.

Commissioner Sandhu asked if there is an existing chemical monitoring system in the building since it is in an industrial area.

Based on his assessment, Mr. Hernandez replied that for the nature and types of material used in the area, a chemical monitoring system would not be needed.

Commissioner Sandhu noted that a chemical monitoring system was needed for the Korean Baptist Church that was approved on January 14, 2004. Ms. Duncan noted that he was correct and in that particular case, there was an existing monitoring system due to ammonia that was being used near the vicinity.

Commissioner Sandhu asked if the applicant would be providing food service for the people coming to worship, or if a caterer will be providing food. Ms. Duncan replied that the application as proposed does not include any food preparation.

Chair Nitafan noted that for phase I, 299 parishioners are expected and 750 parishioners are expected after phase II. He was concerned about the dramatic increase of people that might possibly litter Penetencia Creek and suggested that the church volunteer to clean up the creek to help the environment.

Chair Nitafan asked if the church was going into a flood zone area and Ms. Duncan replied that she wasn't sure.

Ms. Heyden recalled that last year, the City Engineer presented the Capital Improvement Projects (CIP), and noted at that time, there was a change in the flood maps and some areas were able to be taken off of the flood zone which is a benefit to homeowners who would pay less insurance rates. She wasn't clear whether the property was one of the areas that were taken off of the flood zone. Chair Nitafan introduced the applicant.

Wayne Okubo, 1686 Avila Place, Cupertino, thanked staff for expediting the application process and for all their hard work. He explained that Everlasting Private Foundation is a non-profit organization and is separate from Living Word Baptist church. Everlasting Private foundation is a support foundation that basically supports organizations that fulfill its purpose. As far as the studies that were put together by experts, the team went ahead and instead of doing 1,000 feet, they did 2,000 feet going north that was recommended by the Fire Marshall Patti Joki, and will result in minimal amount of impact to the actual project itself.

Mr. Okubo stated that Living Word Baptist church supports the mitigation measures and understands that fire drills have to be conducted with the fire dept. present, and so Pastor Kim is aware of that and will be conducting the fire drills. In addition to that, the group of experts includes Dan Hernandez who did the environmental analysis along with Richard Mindigo, architect Peter Ko and structural engineer Don Peoples who are available for questions or concerns. In addition, Living Word is ready to start on phase I, and upon completion will begin phase II. Phase II consists of a lot of structural changes and Don Peoples will be working on the plans.

Commissioner Giordano asked if the applicant went through a pre-application process and Mr. Okubo responded, "Yes".

Pastor Kim, 20566 Cedar Road Terrace, Cupertino, stated that on behalf of Living Word Baptist church, he would like to thank planning staff for putting together all of the information necessary for the permit process and explained that Living Word Baptist grew out of San Jose and is very proud to be considered as tenants for Milpitas. Pastor Kim met with the mayor and many other people, and felt that Milpitas is very concerned for the citizens and is happy to know that. He asked that all of the members of the congregation that are supporting the project stand up in the audience.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

**Close the public hearing on
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Garcia commented that he is concerned about what is happening with the City's tax base and what is happening with city revenues. He understands that the City is considering churches and that it is an appropriate use, however, he is concerned about impacts on city revenues. He suggested that an analysis be completed to take a look and see what non-profits are doing with revenues since his concern is with long-term impacts. For example, the church is going to occupy a facility over 200,000 square feet in non-profit status. Commissioner Garcia suggests that staff analyze this before the Commission reviews another church application.

Chair Nitafan noted that right now, the Commission shouldn't divert their attention from Planning since it is in purview from City Council. Staff could take a look at the item and make a recommendation and pose it to City Council.

Commissioner Giordano noted that Commissioner Garcia made a good point and noted that she attended the Economic Development Commission meeting and at the last meeting, one of the issues that were discussed was surveying the vacant industrial buildings and suggested Commissioner Garcia might want to pass this issue through to them.

Motion to approve Use Permit No. UP2003-59 and Environmental Impact Assessment No. EA2004-3 with staff's recommended special conditions.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**IX.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:52 p.m. to the next regular meeting of March 24, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

March 24, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu

Absent: None

Staff: Carrington, Duncan, Fujimoto, Heyden, Lindsay Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
March 10, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 10, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, announced that the City will be conducting a series of ethics workshops, and each Chairperson was asked to attend to represent their Commission and Chair Nitafan has accepted that responsibility of representing the Planning Commission at those workshops.

Chair Nitafan added that anyone from the Commission is welcomed to attend.

Commissioner Sandhu announced that the Sikh Foundation of Milpitas is holding a free breakfast on April 4th at Sunnyhills Methodist Church from 7 a.m. to 8:30 a.m. The members of the Sikh community will educate everyone about Sikh cultures, beliefs, and customs and everyone is welcomed to attend.

Commissioner Giordano congratulated Chair Nitafan and the Knights of Columbus for a well-attended dinner Saturday night in honor of Marilyn Hay, Citizen of the Year, Steven King, Firefighter of the Year, and Henry Dekruyff, Policeman of the Year.

Commissioner Giordano asked staff what was the outcome at the Berryessa Creek project meeting on March 15th regarding five feasible alternatives for the creek. Mr. Lindsay responded that staff is not prepared for a presentation but will be happy to provide an update at the next meeting.

Commissioner Giordano thanked staff for giving notice to the Commission about the Santa Clara County Chamber of Commerce Coalition that put together the Second Annual Legislative Summit. The topics included were workers composition reform and healthcare reform. She advised staff to please keep the Commission abreast of these issues and luncheons so that the Commission could attend.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 5, 6, 7, 9 and 10.**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 5, 6 and 7.

There were no speakers from the audience.

**Close the public hearing on
Consent Item Nos. 5, 6 and
7.**

Motion to close the public hearing on Consent Item Nos. 5, 6 and 7.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 5, 6, 7 and 10 and continue Consent Item No. 9, "S" Zone Approval Amendment No. SA2004-13 to the April 14, 2004 meeting.

***5 SIX-MONTH REVIEW (PR2004-1):** A six-month review of Calvary Chapel of Milpitas in regards any garbage or parking concerns associated with Use Permit No. UP2003-16 at 1757 Houret Court (APN: 086-41-009), zoned Heavy Industrial (M2). Applicant: Calvary Chapel of Milpitas. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2332) *(Recommendation: Note receipt and file)*

***6 USE PERMIT NO. UP2004-5:** A request to allow a store selling used merchandise, such as thrift stores at 4 North Abel Street (APN: 022-08-038), zoned Mixed Use (MXD). Applicant: Patrick Lam. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2365) *(Recommendation: Approval with Conditions)*

- *7 USE PERMIT NO. UP2004-4:** A request for a parking reduction of 18 parking spaces for the conversion of a Research and Development facility to medical offices at 611 South Milpitas Boulevard (APN: 086-42-029), zoned Heavy Industrial (M2). Applicant: HCP 611 Milpitas LLC. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3173) *(Recommendation: Approval with Conditions)*
- *9 'S' ZONE APPROVAL AMENDMENT NO. SA2004-13:** Request to install an 8-foot tall wood fence located at the rear of 244, 255 & 260 South Main Street (APNs: 086-27-013 & 014), zoned Mixed Use (MXD). Applicant: Jim Rocha, Jr. Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Continue to April 14, 2004)*
- *10 "S" ZONE APPROVAL AMENDMENT NO. SA2004-18:** A request for a sign program for single tenant building recently subdivided to accommodate three tenants at 275 West Calaveras Boulevard (APN: 022-25-042), zoned General Commercial. Applicant: Lisa Lo. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Approval with Conditions)*

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

Troy Fujimoto, Acting Associate Planner, presented the following three applications and recommended approval with conditions based on the findings and special conditions noted in the staff report and the revision to Condition No. 7d noted in the staff memo provided before the meeting.

- 1. SITE AND ARCHITECTURE REVIEW (SZ2003-12), USE PERMIT NOS. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1** *(Continued from March 10, 2004):* A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot supermarket with the sale of all types of alcoholic beverages, a 32-seat Coffee café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California.
- 2. USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SZ2003-13)** *(Continued from March 10, 2004):* A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California.
- 3. SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5)** *(Continued from March 10, 2004):* A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California.

Commissioner Giordano asked how will the delivery times and noise impacts be monitored. Mr. Fujimoto responded that both are conditions of approval and part of a mitigation measure for the EIA that was done for the project. In regards to how that is going to be monitored, Mr. Fujimoto explained how they would be addressed on a complaint basis.

Commissioner Giordano noted that the proposed residential projects will be 14 dwelling units per acre, and asked what is the current density of the homes behind the town center. Mr. Fujimoto deferred the question to the applicant.

Commissioner Giordano noted that for the 65 proposed units, 20% of the parking would be dedicated for guest parking. She asked if this would be adequate parking and Mr. Fujimoto responded, "Yes".

Commissioner Giordano asked why is the parking requirements different for some businesses at the town center. For example, she noted that Giorgio's has a requirement of 1 space per 3 seats and Erik's deli has a requirement of 1 space per 3 ½ seats, which doesn't seem to be consistent.

Mr. Fujimoto explained that over the years, the zoning ordinance has changed and parking ratios have changed. For example, he explained that when Giorgio's came in as a restaurant and applied for a use permit, at that time, the parking ratio was 1 space per 3 seats, and over time it has changed. That is why there is a variation because all of these permits came in at a different times, and staff didn't feel it was fair to go back and penalize the business owners and have them at a higher parking ratio.

Commissioner Giordano asked if Giorgio's were to take a place of a different type of restaurant, would staff enact a new parking ratio for that. Mr. Fujimoto responded that has kept the same parking ratio with other projects so that a change of ownership will keep the same parking ratio that was approved with a conditional use permit.

Commissioner Giordano asked how feasible is it to transplant trees and if this is something that the City does regularly. Mr. Fujimoto explained that trees have been transplanted at a couple of locations throughout the City and if the trees are too big, they can't be relocated because the equipment to relocate them isn't large enough to do that. Also, if there is a big enough root ball that is taken and transplanted correctly, there is a better than average chance of them surviving, however, that is not guaranteed.

Commissioner Giordano asked what is the plan in case the trees do not survive. Mr. Fujimoto noted that any tree that dies needs to be replaced.

Commissioner Giordano questioned a recommendation from staff that read the following and needed clarification:

"To minimize aesthetic concerns with shopping carts left outside for extended amounts of time, staff recommends that shopping carts be collected on a regular basis".

Mr. Fujimoto explained that the shopping cart concern was an example of a problem that the City had with Home Depot. Home Depot had left their carts all over the parking lot and staff had to work with them and the Mall to clean up the carts and had them enter into a cart collection agreement, which said that if they don't collect the shopping carts the City will charge them. Staff did not want the same thing to happen with the grocery store in this project because it looks unsightly when shopping carts take up parking spaces.

Commissioner Giordano asked how outdoor storage of product or material will be monitored. Mr. Fujimoto explained that the City does not allow outdoor storage of products or materials and it needs to be taken into the building and out of sight. Outdoor storage is handled as a standard condition of approval on all commercial projects.

Commissioner Giordano asked if the pedestrian kiosk signs will be lighted and Mr. Fujimoto deferred the question to the applicant.

Commissioner Giordano asked if staff felt confident with the conclusion of the noise report relative to the decibel levels behind Safeway. Mr. Fujimoto noted that it's important to remember that the noise element in the general plan is an average 24-hour reading and there may be instances where you exceed the decibel level as identified in the general plan and that is taken into account as part of the 24-hour cycle. There could be occasions where a loud noise occurs, and if that occurs, it is difficult for anyone to respond to it because once it happens it is gone.

Commissioner Giordano was concerned that higher decibel levels were taken into account at the hours of 10 p.m. to 7 a.m. Mr. Fujimoto explained that there is a higher penalty for any noise happening during that time and the noise study did take that into account and that is why there are limitations for delivery between 10 p.m. to 7 a.m.

Commissioner Giordano asked what is the proximity to the nearest housing units from where the deliveries would take place. Mr. Fujimoto replied that there is about a 60 feet distance and noted the applicant moved the loading dock ten feet further to the south and staff is recommending that the sound wall be raised to the height of the tallest delivery vehicle.

Commissioner Giordano asked how would the automobile stacking that will take place at Hillview Drive be mitigated. Mr. Fujimoto noted that as part of the traffic analysis that was done, it recommended a revised layout that will provide additional capacity on Hillview Drive to accommodate the stacking. In addition, an additional turning lane was recommended so there is more room to stack the cars and to avoid conflicts further down the road.

Commissioner Giordano asked if it has been analyzed. Mr. Fujimoto replied that it has been analyzed and has been determined to be a possible solution. There is a condition in the staff report that notes it will be monitored for a period of 3 years, and if it trips a traffic signal warrant, then a traffic signal would have to be put in, so there will be annual monitoring of that area to ensure that what staff is recommending actually works.

Commissioner Giordano noted that staff makes a comment in the staff report about the farmers market and if the town center owner is unsuccessful in relocating the farmers market, the City will assist in keeping this as a public benefit for the City and help identify sites for relocation. She asked if staff will be assisting the moving of the budget theaters.

Mr. Lindsay replied that there is no effort currently to relocate the theaters within the city and the farmers market is a very mobile operation and the City felt that it could be successful in working with Shapell to find a different location for the farmer's market.

Commissioner Galang asked how many supermarkets in milpitas are open 24 hours and Mr. Fujimoto replied that the two Albertson stores are open 24 hours.

Commissioner Galang asked if products such as water bottle piles, Christmas trees and pumpkins will be allowed in front of Safeway. Mr. Fujimoto noted that Christmas trees and pumpkin sales are allowed in certain zoning districts and pumpkin sales need an additional permit to ensure that is cleaned up and returned to its additional conditions.

Commissioner Galang asked if the City allows shopping carts in front of the building. Mr. Fujimoto responded that if shopping cart storage was identified as part of the original approval, then it would be allowed.

Commissioner Galang asked staff to clarify condition no. 19 that reads below:

19. Lighting Glare - Exterior lights shall be shielded to prevent light spillage onto residential areas. (P)

Mr. Fujimoto noted that staff wanted to ensure that any lights proposed for the project will not get spilled into the residential portion of the project, including Beresford Village.

Commissioner Garcia noted that in regards to conformance to the general plan, he came to a slightly different conclusion that a Safeway is a good fit at the Town Center, and asked staff to explain their rationale.

Mr. Fujimoto explained that in general, the Town Center district allows a supermarket as a conditional use, if the Planning Commission finds that the use is appropriate for the location. The project is in conformance with the zoning ordinance as well as the general plan. Other general economic findings in the general plan talk about economic stimulus, new businesses and balanced economy, all of which ties into those aspects that is identified in the Town Center. The Town Center has only a couple items, so staff can pull from other portions of the general plan that are relevant and apply it to any project in the zoning district. It just so happens that the Town Center is called out in the general plan and has these findings that should be made for a project that is proposed there.

Commissioner Garcia read the following paragraph from the General plan:

“The town center designation provides for a variety of commercial, civic and residential uses, appropriate to the center’s role as the functional and visual focus of milpitas. The town center is a meeting place and market place, home of commercial and professional firms, an entertainment area and a place for restaurants and hotels”.

He noted that the zoning ordinance supports the terminology.

Commissioner Garcia asked if palm trees are approved in City's streetscape master plan. Mr. Fujimoto explained that the streetscape master plan doesn't identify specific species and has a recommended plant list of which palm trees are cited. The master plan does recommend that certain types of species, trees or shrubs be located along certain streets and in certain areas of the streets. There is no species recommendation in this portion of the city.

Commissioner Garcia asked where are palm trees located in the City and Mr. Fujimoto noted that the Great Mall has palm trees along their main entrance.

Commissioner Garcia asked why the housing density is going to be at a much lower level than what is in the general plan. Mr. Fujimoto responded that the housing in the Town Center district is a permitted use at 21 dwelling units and higher and any density less than that is a conditional use. Staff believes that the public benefits being provided offset the lower density, so staff could support the proposed project.

Commissioner Garcia asked if there is a financial reason as to why the builder wants to go to a lower density and Mr. Fujimoto deferred the question to the applicant.

Commissioner Mohsin noted that the staff report states that the location in general does not pose an onsite concern, however, some of the locations selected are directly below and adjacent to the future creek trail and also that the applicant has submitted a storm control plan of the site, including post construction and post management practice for the site. She asked if the control plan could be reviewed by the Commission since some of the construction will be close to the creek and may pose problems.

Mr. Fujimoto noted that the proposed post and pre-construction plan was provided in the Commissioner's packet and the applicant will be submitting a more detailed plan as part of the building permit process, however if the Planning Commission wants to review the project, it is up to the Commission.

Commissioner Mohsin asked how will the City monitor late night deliveries and what would happen if the deliveries increased. Mr. Fujimoto noted that while the city will not be monitoring deliveries, if complaints are received from neighbors, the City will then take action to ensure that the condition of approval and mitigation measures are being adhered to.

Commissioner Mohsin asked if there have been complaints that the City had to take action on. Mr. Fujimoto noted that in the past, neighbors had complained about early morning deliveries at Home Depot at the Great Mall and staff worked very hard with the Mall and Home Depot to come to a point where staff does not have any complaints about deliveries.

Commissioner Mohsin noted that four low-income housing units will be located offsite and asked where that will be. Mr. Lindsay explained that the four off-site housing units would be a rehabilitation of four existing units within the City. The City has a very effective rehabilitation program where money is given through a variety of means to rehabilitate a unit and that unit then is restricted to an affordable level and in this case it would be affordable to a very-low income household.

Commissioner Mohsin asked if staff has identified the location yet and Mr. Lindsay replied, "No".

Commissioner Mohsin asked if there would be a play structure in the recreation area. Mr. Fujimoto noted that the applicant wasn't proposing any recreation amenities and staff felt that would be a problem because of the 3 to 4 bedroom sizes, which would logically have families. Staff conditioned the project to have a tot lot and provide recreational amenities including barbeque pits, benches and tables. When the plans come through the building permit process, staff will verify that these amenities are provided which will then be incorporated with the project.

Vice Chair Lalwani noted that she read there will be a connection from the Town Center to Gill Park and asked where is the connection. Mr. Fujimoto explained that Gill park is located across Berryessa Creek to the north and there will be a future pedestrian bicycle bridge that will be constructed by the City and will provide the connection from Gill park across Berryessa creek. The proposed project will provide a ramp from the bridge, down to the town center project, thus having the pedestrian bicycle connection.

Vice Chair Lalwani asked when will construction begin and Mr. Fujimoto responded, "In the near future".

Vice Chair Lalwani asked how long does it take for the palm trees to grow to full length. Mr. Fujimoto deferred the question to the landscape architect and noted that staff is recommending that the actual palm trees installed have a 12 feet clear, so that the trees will start at a height of 14 feet.

Vice Chair Lalwani noted that there were a lot of complaints and concerns but didn't receive any letters in her packet from concerned residents. Mr. Fujimoto responded that Vice Chair Lalwani should have received letters from concerned residents in her packet.

Commissioner Sandhu asked if the 20,000 square feet of commercial space will be part of Safeway. Mr. Fujimoto referred to the site plan and noted that the 20,000 feet of commercial space includes Safeway and other shops.

Commissioner Sandhu read the following from the staff report, "The residential project would include 16 units to be affordable to moderate income households for 45 years and result in 4 additional very-low income units to be provided off-site" and asked for clarification.

Felix Reliford, Principal Housing Planner, explained that the City has a legal document called a restriction agreement, which is an agreement between the City and the developer that a certain number of units, with a disbursement plan, that is identified on the site will be affordable for a certain period of time. In regards to this project, the affordability is for 45 years, which means that particular unit has to remain affordable with moderate income levels for 45 years. That document is recorded on the deed of the property and it is recorded with the Santa Clara County recorder office.

Commissioner Sandhu asked what would happen if the owner remains the same or changes and Mr. Reliford responded that the agreement runs with the lands, regardless of the owner.

Commissioner Sandhu stated that the Town Center commercial project needs to be successful and Shapell is doing a lot of good work to bring a successful project to the community. He commented on the Safeway store on Montague Expressway stating that it is very beautiful and he hopes to see the same kind of establishment here in Milpitas.

Chair Nitafan asked staff if the 85 protected trees are going to be protected or replaced.

Mr. Fujimoto explained that the trees are not really being protected but are a description of a particular type of tree that meets the requirements which is a 37 " circumference measured 4 ½ feet from the ground. Those types of trees are labeled as protected. If someone wants to remove a protected tree, they would have to come to the City for a permit to remove the tree. In this case, some of the trees are so large they physically can't be relocated because there is no equipment large enough to relocate them so those trees will be replaced with a 48" box tree.

Chair Nitafan noted his concerns that the conceptual drawings do not have details, and felt that the drawings should come back to the Planning Commission Subcommittee. Mr. Fujimoto explained that the major tentative map will come back to the Commission because it has to be approved by City Council because it will be a major tentative map and there will be changes. As proposed, staff felt that the changes that are needed could be handled at a staff level, however, if the Commission felt that the it needs to be at a higher level, that is their purview.

Chair Nitafan pointed out that the lighting plan doesn't have enough details and should be brought back to the Subcommittee for further review.

Chair Nitafan mentioned his concerns about the traffic on Hillview Drive, and noted that the applicant plans on changing the road in the area and felt that the Commission needs to see more details on the road changes. He explained that there have been fatalities at the intersection at Calaveras and Hillview and that one of his relatives had died there. Mr. Fujimoto explained that the actual recommended changes are in the traffic study under figure 12.

Chair Nitafan noted that there are no plans under figure 12, only a description, however he felt that it is a good idea that the applicant and the City will be monitoring the intersection for a period of 3 years to avoid fatalities, and that he would like to see the plans come back to the Subcommittee.

Mr. Lindsay noted that a number of Commissioners during the question period had asked about the code enforcement process. He explained that if Safeway were not to comply with the conditions of approval, the City has a very effective citation process, which would be used if Safeway were in violation of their use permit and does not comply with any of the approved conditions. If the citation process is not effective in ensuring compliance, then the use permit can be brought back to City Council for review and additional measures would be imposed upon Safeway. He also noted that the City has a fairly good track record with other grocery stores in town and is expecting a very good track record with Safeway.

Commissioner Mohsin asked staff to clarify the in-lieu park fee. Mr. Fujimoto replied that with any residential project in the City, the applicant is required to provide parkland. Unfortunately, there is not enough space to create new large parks, so staff has to equate the acreage that the applicant has to provide and assign it a monetary number that could be used to create new parks elsewhere or try and enlarge or enhance an existing park.

Commissioner Mohsin mentioned that she was concerned about the in-lieu fee because she would like to see more play structures and playgrounds for families, and noted that she would like to see a model of the proposed tot lot.

Mr. Fujimoto replied that as part of the condition of approvals, staff actually identified the different type of recreational amenities that would be needed in the project. Staff also recommended that the plans would come back for review to ensure that those amenities are provided in the project.

Chair Nitafan agreed that the recreation amenities should come back to the Subcommittee.

Chair Nitafan asked the applicant to make a presentation.

Kelly Erardi, Vice President with Shapell Industries of Northern California, 100 N. Milpitas Blvd., complimented staff on a very thorough presentation. He has been with Shapell for over 20 years, and the Town Center was one of the first projects that he worked on. The Town center was one of the first major retail projects in Milpitas and had a good 12 year run of being the best project in Milpitas, however over time, Milpitas changed and the population grew, and in a very short period of time, the City approved a couple of million square feet of retail, particularly the Great Mall and McCarthy Ranch Marketplace. Over that period of time, the Town Center lost a number of key tenants – Marshall's, Clothestime, Men's Warehouse and Michael's. Also, the AMC movie theater eventually left when the Century theaters did a larger more detailed project at the Great Mall. As that occurred, he explained that the Town Center project started on a downhill slide, and as that occurred, Shapell started looking for the best way to position its progress for the next 20 to 25 years, and through that process, a lot of tenants leases expired, or became short term leases.

Mr. Erardi felt that the proposed project has a combination of right uses, and introduced the consultants that would be presenting a presentation. He introduced Galen Grant with Craig and Grant architects, David Smith, Leslee Temple with Nuvis, Sudhish Mohindroo with SZFM Design studio and also noted that the Safeway representative, sound consultant, traffic consultant and civil engineer would also be available for questions.

Galen Grant, Architect, presented the Town Center project and stated that their vision for this project has been consistent with what Shapell has envisioned. The goal was to really make the project a commercial success, friendly place for pedestrians and friendly place for customers to drive to. Many cities are looking for mixed use, and in this case, adding the residential component was a complimentary blend between upgraded retail and pedestrian friendly. He added that hopefully, it will be a success for the City as well as Shapell. He showed the buildings that would be remodeled and demolished and noted that the consultants were sensitive to the concerns of the neighbors and met with them to be clear on what their concerns were.

David Smith, Architect, presented the residential portion of the project. He noted that the residential site sits to the north of the commercial project and will be about 4 ½ gross acres. The residential site abuts the creek to the north, there is existing residential to the west and to the south, there is an access road and the proposed revised retail. He explained that the net area of the site is about 3 ½ acres out of 4 ½ acres, and loses about an acre because of the two large utility easements. One is the PG&E easement along the north which parallels the creek, and the other easement is on the easterly edge, which is the large water reservoir. He explained that because of the easements, the density, either net or gross, changes from about 12 or 14 an acre to about 18 ½ an acre that is usable land.

Mr. Smith explained that the proposed townhomes will be 2 and 3 stories with an attached 2-car garage, noting that it is a very desirable product in the marketplace. He explained that it keeps from putting units over one another, which is called a stack flat, or a condo, and there are a lot of issues involved with that. He noted that if questions come up in more detail, the liability with condos are tremendous.

He noted that this type of project has not been built before and it looks like a pork chop, with the fat and slender portion. In order to utilize the geography of the site to its fullest, he explained that they have come up with a concept of cluster buildings, courtyard buildings and linear buildings. He felt that every site plan should create a special sense of place and create a space for the people that live there that just go beyond the number of units and that is everyone's wish in their housing environment. To mitigate the impact of cars in the neighborhood, motorcourt buildings were designed to allow the attention to be on the outside of the building and be able to view porches, outdoor patios and windows.

Leslee Temple, Vice President of Nuvis, presented the landscape portion of the project. She noted that their focus was to create a new and dynamic visual impact for the center and to complement the architectural styles, so it is a real master plan between all three disciplines. Their biggest concern was to harmoniously blend everything from the street frontage along Calaveras and Hillview all the way in through the site, and back to the creek and residential area with a softscape, and to provide scale, seasonal interest and a pedestrian orientation. She explained that their emphasis was to have a real impact on the street frontage along Calaveras, so as people are driving along Calaveras, it's a sense of a rival into the town center, and part of that is a change in the very entryway to a double row of palm trees. She also noted that there are several opportunities along the paseo to build tot lots and passive recreation uses in the larger areas, which would all be connected by pedestrian friendly cross walks.

Sudhish Mohindroo with SZFM Design studio, presented the signage. He stated that the various functions of the project present challenges and opportunities such as having several access areas to the town center from Calaveras, Milpitas Blvd. and Hillview and having various uses such as a civic center, commercial buildings, residential buildings and free standing buildings from all scales and sizes. Since there is a large setback from Calaveras, they designed an approach, which is more like a campus. For example, because of the major entry points the signage will look like a gateway, and once customers get into the complex, they will have some choices to make, so directional signage is needed. When customers find a place to park, they will leave their cars and become pedestrians again.

SZFM Design studio created an entry gateway of a substantial scale that will clearly identify what the main entrance is (along Calaveras), and will flank the roadway just like the palm trees are doing. As customers go in, there will be secondary gateways that are smaller in scale. There will also be directional graphics that will lead customer's eyes to the light fixtures. He also explained that the individual tenant signs are recommended to elevate the quality of signage, and that the applicant has developed a package that will allow tenants to do signage of however they need to be of a higher quality and is encouraging them through various programs that are offered through the sign guidelines. He also noted that within the shaded walkway areas there will be plate signs of a pedestrian scale so that a customer will be able to see which store follows the next store.

In conclusion, Mr. Erardi stated that Shapell is very proud of the project that has been presented and is very happy to have Safeway, which is one of the best supermarkets in the nation. He felt that the project has created a great buffer in the back of the shopping center as compared to what was before. There is only one loading dock, where there were three loading docks before. There is mature landscaping as well as a buffer of trelliswork. Deliveries to the back of the shopping center were improved by coming from Calaveras Blvd. versus Town Center drive, which is a condition that came up after meeting with the neighborhood and went beyond the sound study. He also noted that Shapell has been in Milpitas for a long time and their building is within the Milpitas town center too and are in the process of remodeling.

Vice Chair Lalwani mentioned that she liked the idea of affordable units and the project is providing more than 20%. She also liked the idea of palm trees because it gets the feeling of an island. She mentioned her concerns from residents about why the movie theater is leaving, why did Shapell choose Safeway, and what will happen to the farmers market, and asked Mr. Erardi to explain. She also asked why Shapell didn't approach Trader Joes or Whole Foods market.

Mr. Erardi responded that Shapell felt that Safeway was the best for economic reasons and the type of operation it is. Safeway is proposing 54,000 square feet of retail, and the next largest store is Ranch 99 market, which is 35,000 square feet. Shapell talked to other retailers and Safeway is the number one choice. He recalled that when Wal-Mart came to town, there was competition. Shapell's philosophy is if that if there is a great retailer coming into town, they want to have them in their project. He felt that competition typically makes everyone work harder and makes them do better, or if they do leave, it raises the level for everyone.

In regards to the movie theater, Mr. Erardi explained that when the Town Center was in the transition period and AMC left, Shapell did a short-term deal with the movie operator, and that deal was always set up as short term. It turned out to be a real good thing. From a standpoint of everything that is going on with the project such as housing, retail and rehabilitation, it doesn't make sense for Shapell to keep the theater. In regards to relocating the theaters in another Shapell project, it is highly unlikely.

In regards to the farmers market, Mr. Erardi noted that group remains very loyal to the town center because they have probably been approached by a number of other areas to come into their project, and Shapell has also invested a little money to help them get started. The farmers market was also a short-term interim solution to get a little traffic into the project and keep people coming into the project, and has blossomed into a great cultural community event. He noted that Shapell will do their best to keep them in the project, but not at the price of losing key retailers and impacting the parking.

Commissioner Giordano asked what is the current dwelling unit for the existing Beresford homes. Mr. Lindsay replied that it is 9 to 10 units an acre and there are about 116 townhomes.

Commissioner Giordano asked if the kiosks will be lighted and Mr. Erardi replied, "Yes".

Commissioner Sandhu congratulated staff about the public benefits of the project, particularly the enhancement of the sidewalk connection along the northside of the existing library, which will become the senior center, and noted it will benefit the seniors. He also noted that the bright colors and signs of the building will attract drivers on I-680.

Commissioner Sandhu asked if there will be provisional notifications to potential buyers of the townhomes stating that there will be loading and unloading zones in the area. He recalled that after the Great Mall project, nearby residents would attend Commission meetings complaining about noise and traffic.

Mr. Erardi replied that Shapell's plan is to build the commercial first, and then the residential area and there will be disclosure statements to the owners.

Commissioner Galang asked why does Shapell want to get rid of the theater in the town center. Mr. Erardi responded that Shapell wants to build a new project that was presented.

Commissioner Galang asked if Shapell plans on relocating the theater at the Serra Center. Mr. Erardi replied that Shapell doesn't own the Serra center and believes that the owner of the theater is looking around for another location.

Commissioner Galang asked what does Safeway mean by a "one stop shop". Mr. Erardi explained that most Safeway stores have groceries, a Chinese restaurant, Starbucks, Deli, florist, meat dept., Pharmacy, financial institution and a photo shop.

Commissioner Garcia was concerned that the project was not in conformance with the general plan and asked if Shapell had explored other options. Mr. Erardi replied that Shapell had explored other options for the last 5 to 6 years, depending upon who was in the market place and what the economic conditions were, and felt that Safeway could make it happen. He noted that Albertsons is a supermarket and is in the same zoning district as the Town Center.

Commissioner Garcia felt that the concept of the Town Center should be a meeting place, especially the central portion, which is going to be adjoining the civic center section and anchor stores, and his perception is that a Safeway is a bit unusual to be in Town Center. He noted that he visited the new Safeway in Fremont and that it is a beautiful facility, but it is definitely not a meeting place of a center. He noted that there is no mention of a grocery store in the general plan for the Town Center, nor is it specifically mentioned as a conditional use.

Mr. Erardi commented that Shapell has done a pretty good job of tying the project in the community with the pedestrian links, fountain features, landscape features, and there are some areas where someone can walk from the park, to the residential area, through the commercial area, grab a cup of coffee and head down to the library or future senior center.

Commissioner Giordano asked Mr. Erardi to comment on Commissioner Mohsin's concerns about the tot lot. Mr. Erardi noted that Leslee Temple has developed first class tot lots before, and is sure she will design a great one.

Chair Nitafan asked Attorney Faubion to clarify the compatibility of a grocery store in the town center district.

Attorney Faubion commented that with respect to the grocery store, it will be a determination that the Planning Commission will make and have flexibility to interpret the general plan. She explained that the general plan under the town center designation describes the role of the plan and the kinds of uses it anticipates. The relationship between the uses, in this particular case, there is not one particular use that defines the town center area, but there are various uses in the interplay of the uses that is also part of that, where in other land use district, that is probably a lesser element. She noted that Commissioner Garcia is correct that a supermarket is not specifically identified in the general plan, but the Commission has the ability within their discretion to determine whether a type of use or proposal is consistent with the intent and interplay using the text of the land use designation as a guide.

Chair Nitafan opened the public hearing.

Heidi Wolfe-Reid, 1397 Yosemite Drive, urges the Commission to vote in favor of this project and felt it is a great project. She has been waiting for a Safeway to come back for many years and felt there is a real need for a major supermarket in town with the additional housing that will be created in the next couple of years.

She is concerned about having 14 units to the acre for an in-fill project and knows there are a lot of challenges at the site. She is concerned that the acreage is not meeting the Housing Element and suggested that for the next housing element to look at minimum densities to make sure that now and in the future, the City will be able to meet the housing goals. She is a frequent shopper at the farmers market and felt that the market should move to Midtown.

Johnny Ambrosia, Galindo drive, felt the project is a great idea and that not a lot of people have been at Safeway lately. He recently visited one and was impressed with their full service and wonderful staff. He thinks the project looks like a mini Santana Rowe and felt the project would bring energy to the City because it has charm.

Rob Means, 1421 Yellowstone, noted that most folks think the Town Center is a good place for Safeway, but he doesn't. He noted that 10,000 people a week and 40,000 people a month visit the movie theaters and he doesn't like the Century theaters. He felt that the bottom line is the extra public benefits for the project doesn't offset the loss of the theater. He also felt that the fact that there is no solar orientation at all with the project and the fact that there doesn't seem to be no mitigation with energy use, the City will be hitting a wall in the next couple of decades regarding energy. He also stated that the Commission has the authority to deny the project because it doesn't fit with the general plan.

Garmey Kendola, Concerned resident, noted that he submitted a detailed noise analysis to staff and the Commission detailing the noise impacts to his resident. He asked if all of the daytime deliveries will be from Town Center Drive. Mr. Lindsay responded that the deliveries would be from Calaveras Blvd.

Mr. Kendola explained that there is a noise law that states during the daytime and nighttime the noise levels have to be below certain levels. With his noise analysis, he has taken into account, the noise that a delivery truck would produce and came to the conclusion that the noise would travel 300 feet to his neighborhood. He explained that the noise being produced from a truck that beeps as it backs up into the loading zone goes above the noise levels.

Mr. Kendola disagreed with Mr. Fujimoto's analysis about the 24 hours measurement of CNEL levels, and that those levels are meant for airports developed by the state of California, not for residential areas. He pleaded with the Commission to review his noise study.

Ed Connor, 1515 N. milpitas blvd., felt that the way to keep the City beautiful is to have the City buy the Town Center property from Shapell and build a City square. He noted that he has talked to the city manager about it and felt that Milpitas has been very generous to Shapell and they should consider selling the piece of property. He recommends abandoning the project and noted that if Safeway is approved, he will not shop there.

Concerned Resident, 286 N. Abbott Avenue, disapproves of the project because of traffic impacts and felt that dumping more people and stuff on a facility will cause stress on Calaveras. He asked when will the City expand Calaveras Blvd. to six lanes.

Jeffery Rohm, 364 Sandcrest Drive, had serious concerns about noise and doesn't see a firm solution from the plan. He visited the Safeway store in Santa Clara and talked to residents that lived behind there, and found out that the truck moving noise is loud during the nighttime, even though there is a soundwall behind the docking area. but what I found was that noise came from the truck movement behind the soundwall, He explained that when a truck moves in and maneuvers back into the position it takes about 5 minutes, and the noise level wakes up the people in the night everyday. He is concerned that older people will wake up in the middle of the night and will not be able to sleep anymore and is concerned that the Safeway at the town center will have two big truck delivers and two small truck deliveries during the nighttime.

Cece Zamora, 1955 Everglades drive, strongly urges the Commission to think of the ripple effects of the project and is sure that past decisions of the development of the McCarthy ranch and Ranch 99 has lead to the decline of the town center, and what may lead to the decline of other shopping centers in Milpitas, and at some point, the Town Center lead to the decline of the Serra center. She urged the Commission take and see what impact the project would have to other shopping centers and what plans the Commission has for improvements to the Serra Center, Beresford Square, Jacklin center and Park Victoria center.

She urged the Commission to look at the parking in residential areas and see if there is sufficient parking for the demographics of the City. She felt that 2 car garages don't usually fit two cars, or even 1 large car, and if you see other developments, cars overflow onto Milpitas Blvd. She felt that the parking problem needs to stop and accountability needs to happen with the developments of the community because it is an epidemic that is happening to the City.

She also stated that it is a shame to lose the theaters because it is something that is great to congregate with children and family. She commented that the palm trees are lovely, but are a harsh contrast to the opposing side of the road and if the development goes forward, one side will look different than the other side. She felt that the trees should compliment both sides of the street.

Robert Ya, 260 Woodward Drive, followed up on a letter that Beresford village has sent in as a community and felt that most of the presentation tonight has been about the project and is concerned about the impact of the project to the community and to the rest of the milpitas. He stated that residents have been trying to voice their concerns and have tried to be included in the process, and aside from the public hearing, have not had a voice in this process. He stated that the traffic is a dramatic issue especially because there are a lot of young families that live in the development, which is a safety issue. Beresford village had to put up speed bumps because people cut through to get through to the development through the other side of the street. He is concerned about safety and about the general knowledge of the development in the surrounding area. He also noted that his friends live within 300 feet of the proposed project and did not receive a public hearing notice.

Arnette, 246 Lynn Avenue, is surprised that the City would want a supermarket behind city hall because of all the debris that the grocery store would generate. She felt that the palm trees look very clashing to have palm trees on one side of Calaveras and a different kind of tree on the other side and noted that palm trees are on every major shopping center in Milpitas and are boring. She stated that municipal Darwinism needs to stop because it is killing off the endangered small businesses in Milpitas.

She is concerned that when Safeway comes, Albertson's will pull out and also objects to the eviction of the cinema savers. She said that the City has to think about people on low income, plus the theaters give you a second chance to watch movies that disappeared over night from the century theaters and Century theaters doesn't give no discounts and people needs discounts these days.

Concerned resident, 286 North Abbott avenue, has lived there for over 44 years and has seen a drastic change in the traffic conditions in the neighborhood. She noted that if Safeway is built, she will not shop there.

Donnette Peter, 2155 Seaclift drive, opposes to putting a Safeway in and thinks the City can make better use of it. She would like to see the place revamped, but if there is going to be a one stop shop, why not put it into different little shops for small business owners. She thinks the palm trees should be nixed and would like to see the Cinema savers remain.

Mike Messinger, Commercial real estate, (worked on the town center for the past 14 years), heard a few comments regarding Trader Joes and Whole Foods, and responded that they have been contacted them and turned down the project over the years about 3 or 4 times because demographics do not work for them. He commented that a center of this size of about 250,000 square feet requires an anchor to make it a viable center. The only other anchors that had any interest were Home Depot, 24 hour Fitness and Safeway. He felt that Safeway has been the best anchor that has been interested in the center.

Close the public hearing

Motion to close the public Hearing.

Giordano/Sandhu

AYES: 7

NOES: 0

Chair Nitafan asked staff to comment on the noise issues.

Mr. Fujimoto replied that the City has a noise element that is part of the general plan, and the noise element identifies a 24-hour average that needs to be maintained in different residential districts as well as different types of uses throughout the city. When an occasional noise occurs, the general plan takes that into account and it is averaged through a 24-hour period. If a single event that exceeds a certain decibel level happens, according to the noise element, it doesn't put the event out of conformance with the general plan.

He also explained that noises that occur during the days have a certain value, and noises that occur during sensitive hours such as late at night, are penalized at a higher level, thus if more noise is produced late at night, it increases the noise levels that are generated over a 24 hour period. He noted that the applicant has done a thorough noise analysis that takes into account all of the different types of uses that currently exist and analyzed the impacts that the additional deliveries will have on site. That is why the applicant concluded that deliveries are limited to four - two refrigerated deliveries and two non-refrigerated deliveries - anything more will put the deliveries at non-conformance with the general plan and will put it at non-compliance with the noise element.

Mr. Lindsay added that one of the comments was that the CNEL 24 hour average is not a commonly used average for this type of business, however, throughout California planning law and housing codes, it is commonly used as an industry standard for evaluating noise levels and is averaged during a 24 hour period.

Chair Nitafan asked staff to comment on traffic mitigations and safety.

Mr. Fujimoto commented that the traffic impacts were analyzed based on existing conditions and how the new use will impact the surrounding street network. He noted that there is a particular amount of square footage that is identified as commercial and the analysis analyzes how many trips the new use would generate and puts into the existing street networks. If it triggers any of the CMP triggers or seconds of delay at intersections, the triggering of any level of services, such as going from a level of service D to a level service of E, or to a level of service E to a level of service F, these types of triggers would require further analysis or additional mitigation measures.

He also noted that when the project was analyzed, the amount of new trips that would be generated from this project didn't trigger any of these thresholds that staff would then have to put in additional mitigation measures. The traffic analysis that was done did take into account the existing uses plus the new uses that would be expected from not only the supermarket but the residential area as well.

Chair Nitafan asked staff to comment on trash issues.

Mr. Fujimoto replied that one of the conditions of approval is that the property owner will have to submit a maintenance plan for the entire site which would cover landscaping, maintenance of parking lots, striping, and garbage and if at anytime the Safeway is out of conformance with this plan, staff will have an instrument in place stating that Safeway will have to maintain it to the subscribed level. In addition, staff has a condition that talks about garbage bins or unkept enclosures that it will require immediate further review of how their garbage facilities and how their operations work. Staff also felt that bringing more people into the area will discourage these types of behavior.

Chair Nitafan asked staff to comment on small business competition.

Mr. Lindsay commented that the City is entering into a new realm of combining uses, which traditionally used to be separate, and the vision of the Town Center called for a mixed-use development before it became a common practice as it is now. The vision is finally being realized now with the mixed-use concept being a potential reality within the Town Center district. Staff felt that the interrelationship of the uses can be quite dynamic and be beneficial not only to the residents, but to the commercial tenants as well because it provides a walk able environment in which the residents can have all of these services close by and they will tend to use them more.

Chair Nitafan asked staff to comment on the density issues.

Mr. Fujimoto commented that the project has a density of 14 density units per acre. There is a PG&E easement which can't be developed on, and takes away some of the development potential, however, other than that, this is a project that you will not be able to find anywhere else in the city. It's a new type of use, a family type of development that broadens the housing mix within the City, and staff can support it.

Commissioner Galang asked staff to comment on the speed bumps at Beresford Village. Mr. Lindsay noted that the speed bump referred to is in the adjacent development and are private streets, so the Homeowner Association makes the decision of whether or not the speed bumps are necessary and may install them. The street network proposed would be a private street network, and if speed bumps become necessary it would follow a similar approach.

Commissioner Galang asked what is the speed limit in that area because he is concerned about the safety of the children. Mr. Lindsay commented that these are private streets and would expect the speed limit to be 25 mph and below, and since these are private streets, they are not enforced by the police department but by the homeowners association. Staff felt that the street system designed is very safe and will not pose any problems.

Commissioner Giordano asked staff to comment on Mr. Kendola's noise analysis.

Mr. Kendola commented that whether you use dB limits, daytime and nighttime separately, or if you combine them into CNEL units, the noise limits established by the City of Milpitas are still violated. He stated that his analysis shows the noise violations exactly and doesn't agree with staff's analysis.

Commissioner Giordano stated that she felt strongly that it would be a good project for the City and also felt a sentiment for losing the theaters. She recalled that her last action in 1993 was to approve the Great Mall, which hurt the Town Center deeply, and now she is able to approve the revitalization of the Town Center. She also commented on Commissioner Garcia's concerns regarding the use of Safeway and whether it is conducive to the general plan. She notes that the Commission has recently approved 3 churches in industrial parks, and times have changed. There are vacant industrial buildings and the intended use is for industrial complex, however it is important to understand that the economy has changed and the City should promote businesses to be able to remain the community and be viable. She felt that it is not a departure from what the general plan typically allows for the town center.

Commissioner Garcia stated that it is a good project in many ways, however, he is going to reluctantly vote against it because he is not convinced that this meets the spirit of the general plan. He also commented that the City Center is a future center and meeting place, and is not convinced that a Safeway fits that. He is concerned about the quality of life and felt that the City should have avenues for the citizens to have access to movies and the farmers market. He was also concerned about the future senior center and how it will play into the role of the new project and asked what is the best use of the last piece of land on Calaveras blvd., it is a major piece of property looked at everyday by thousands of commuters and asked how best can we use the town center from a City hall perspective and visitors.

Vice Chair Lalwani noted that she is voting for the project and stated that is not the perfect solution to the problem or the area, it has limitations, but we also know that Town Center has been barren for quite a few years, looking forward to it. I would like staff to work with the gentleman about the noise analysis, I like palm trees but the other side will not have palm trees and will not look asymmetrical.

Commissioner Mohsin mentioned her concerns about the goals of the general plan, and it seems like the Safeway project doesn't seem to fit and she is concerned about the noise, I have once lived in a place where there were trucks, and neighbors would put in windows that would keep the noise out. I know elderly put in complaints about not being able to sleep because of the trucks. I also feel that supermarket should not be next to City Hall, so I am voting against the project. Also, the palm trees, I like shade trees, people want to park under a shade, we don't have too many trees that provide shade. Also in the plan, it shows that Mervyns will not have the palm trees.

Commissioner Galang is opposing the project because he doesn't want to lose the movie theaters, where can you find a dollar entrance fee every Tuesday, families go to the movie theater. The farmers market- where can you find fresh fruit. Also concerned about noise, traffic, and crime. Safeway is unusual in a town center. We also have four supermarkets that are open 24 hours.

Chair Nitafan commented that it is a great project it would invigorate the Town Center, he believed that once Safeway comes there will be progress in the City and it will be a good development. There are also good public benefits such as pathways and trailways.

Motion to approve 1) Site and Architecture Review (SZ2003-12), Use Permit Nos. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1; 2) Use Permit No. UP2002-42 And Site and Architecture Review (SZ2003-13) and 3) Sign Ordinance Amendment No. 124.26 (ZT2003-5) based on the findings and conditions noted in the staff report revised by the memo provided at the meeting modifying Condition No. 7d and revised conditions stating that the landscaping plan, architectural plans and lighting plans come back to the Subcommittee in more detail.

M/S: Sandhu/Giordano

AYES: 4 (Sandhu, Chair, Giordano and Lalwani)

NOES: 3 (Garcia, Mohsin and Galang)

Ten minute recess

Chair Nitafan called a ten minute recess to 10:17 p.m.

2. Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). (Continued from February 25 2004): *Staff Contact: Staci Pereira.*

Staci Pereira presented Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763). Ms. Pereira explained that the City has prepared a Negative Declaration for Ordinance No. 38.763, which proposes to modify the following provisions as they relate to single-family dwellings:

- ☐ Remove the maximum number of unrelated persons that can occupy a dwelling,
- ☐ Require all occupants to function as a single housekeeping unit and provide a definition for single housekeeping unit,
- ☐ Require two parking spaces to be enclosed within the garage and permanently maintained,
- ☐ and expand the definition of a kitchen.

In addition, the project proposes to modify the location of the legal notice postings from the project vicinity to the project site.

Ms. Pereira recommended adopting the Negative Declaration (EA2004-1); and Adopt Ordinance No. 38.763 for amendments to the Zoning Ordinance Text (ZT2004-1) based on the findings and conditions noted in the staff report.

Commissioner Giordano asked who were the five local cities that were surveyed and Ms. Pereira replied Dublin, Santa Clara, Sunnyvale, San Jose, and Campbell.

Commissioner Giordano referenced the letter to Tambri Heyden from the Assistant City Attorney and mentioned that it speaks about regulation of overcrowding in residential homes and read the following from the letter: “thus if a particular property creates a public health hazard to the residents or a nuisance due to overcrowding, the City can proceed to abate the nuisance pursuant to its nuisance abatement ordinances. Enforcement of these ordinances may mitigate many of the negative aspects of overcrowding and may result in the tenants or the landlord voluntarily reducing the number of persons living in the residence”.

Commissioner Giordano asked staff for clarification.

Mr. Lindsay explained that the nuisance abatement process is part of the code enforcement section and it is a way of enforcing it, unfortunately, its not the most effective way. Proving a nuisance and continuing to take it through the enforcement process takes a long time. The burden of proof is much stronger to make that case. For a single-family owner to understand the regulations up front is important. With a clear ordinance, if a resident is considering doing something in their home, they can turn to the ordinance and get a good handle on the regulations. By providing this up front, the expectations are made clear by the City by codifying it instead of relying on a health and safety nuisance factor. Somebody may have been doing something that they thought was okay and they have been doing it for awhile and now the burden of proof is on the City to prove a nuisance. What we are doing here is get it out of the nuisance environment and more of a zoning violation and provide all of the expectations in a very clear way up front for the homeowner so they can understand the parameters in which they can work with.

Commissioner Giordano asked if it becomes a zoning violation is that recorded against the property. Mr. Lindsay replied that it is not recorded against the property but staff has an administration process where they can actually fine the property owner for non-compliance within the zoning district.

Commissioner Giordano asked where do neighbors go if they detect a violation in their neighborhood. Ms. Pereira replied that a neighbor should call the code enforcement hotline and they will respond to the situation.

Chair Nitafan asked Attorney Faubion to expand on property rights.

Attorney Faubion stated that in any kind of a regulatory structure such as a zoning structure and health and safety codes, there is always some element of saying, "no you can't do that", even though you really want to and to the extent that somebody interprets or clearly has a property right. Just the regulation and the City's discretion to legislate for the common good through its police power, often times that will infringe upon private rights and that is why they have to explain why they are doing that. Often times when the restrictions are codified in the zoning ordinance, it does provide that advance notice where at least people then know up front what the rules are and what they can and cannot do if someone really feels that a proposed rule is unfair and unconstitutional and really treads on their right than they can take it to court and challenge it. But the police power is broad and is what the City normally uses to regulate these kinds of things, and to the extent that there is some infringement on property rights that just does happen sometimes.

Chair Nitafan commented that hopefully the City will not have any class action suits on this because the laws are privileged to convert their garage into living space.

Commissioner Mohsin asked if residents can leave an anonymous message on the code violations hotline and Mr. Lindsay replied, "Yes".

Chair Nitafan opened the public hearing.

Resident, 286 N. Abbott Avenue, disagrees with the amendment to remove the number of unrelated persons. He knows of a case in New York where they built 20 story buildings and they became uninhabitable. The City tore them down because they had multiple people living there and were unrelated and women were molested. In Chicago, slumlords converted these buildings and made 15 to 20 rooms in them, and they became slum areas. The City cleaned them up and built single dwelling units. In San Jose, the same situations exist and he doesn't want to see that happening to people.

Cece Zamora, 1955 Everglades drive, representing 15 people that have been working in the City to see this come up and bring this issue to a head, is glad to see it and really hopes that the Commission approves the changes being presented because it is important for the City and young families and long overdue. She stated in about ten years, the streets will be full of cars because of what has been allowed to happen in homes. The cultural differences are fine and great. She thinks that the City needs to have mechanisms to put some limitations on parking and make some provisions for excess vehicles that add to blithe to the city, which she doesn't want to see it become.

Norma Tritton, 286 N. Abbott Avenue, stated that multiple people living in dwellings is not going to work and doesn't want to see her neighborhood become a slum. She commented that over 40 years ago, she wanted to add a second story to her house and the City wouldn't allow it and then a year later, anyone could do it. She did add a one bedroom, but things didn't seem to work out. She stated that if you go into any restaurant you'll see a sign that says maximum capacity and doesn't see why there is not maximum capacities in a home.

Rob Means, 1421 Yellowstone, doesn't understand what the objective is of the amendments and felt the City should tax cars. He felt that a PRT system should be provided so people don't need a car to get around. He felt that we are squelching affordable housing and resource utilization. "If we can't convert a garage, then we are forcing people to use more trees and materials to build more structures to house people that need to be housed. We are not moving towards the way of energy sufficiency and resource sufficiency when we talk about these changes".

Heidi Wolfe-Reid, 1397 Yosemite Drive, commented that she is not crazy about garage conversions and noted there is a huge difference from the ones in Milpitas compared to the ones in San Jose. She stated that the garage conversions in Milpitas are safe and beautiful, and the ones in San Jose are a death trap. Regarding occupancy, she stated that you can't regulate the amount of occupancy and noted that her consultant could not find blithe in the City.

Bill Ferguson, Rivera street, is unclear about the proposed amendment. He lives around Milpitas High and parking is limited from 8 am to 5 pm and felt that the proposed amendments are saying something negative about roommates. He pointed out that it is normal and mainstream to live in a house with roommates because houses are expensive and it takes a large income to buy one. He felt that the City should be more open and accepting, and should allow people to live the way they want to. He also felt that the City shouldn't look down on people that are low income or saving money and people can be employed, laid off, or are living with roommates to save money. He asked that the Commission vote against the amendment.

Motion to close the public hearing.

Close the public hearing

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Commissioner Giordano stated that parking is a real problem and staff has come up with a creative solution in terms of room count and definition of a family unit. She will support what staff brought, however, she encourages the Commission to allow garage conversions to stay in place. She stated that affordability is key in the community with the price of housing. She has seen more and more the need for extended families to have additional space because of aging parents, children that leave home and return with their children and the growing need to have the family relocate.

Commissioner Garcia pointed out that that the real problem is parking and overcrowding in neighborhoods and housing. What staff discovered last year is that the code is unenforceable. He pointed out that the problem with garage conversions is that the streets are too small to accommodate another 2 to 3 cars. It is a tough choice and an affordability issue but the City should establish clear standards and felt that garage conversions should be eliminated.

Vice Chair Lalwani recalled that at the last meeting it was mentioned that half of the garage could be converted and needed clarification. Ms. Pereira stated that at the last meeting, only a portion of the garage was allowed to be converted and half would need to be maintained for an enclosed parking space. Since then, the CAC concluded that to prevent garage conversions altogether was appropriate.

Mr. Lindsay clarified that state and federal laws have preempted the City's ability to regulate how a single family operates. The proposal would allow an extended family to be together and operate as a single housekeeping unit. A lot of the families in Milpitas operate that way because there are several generations living together. The proposed definition would continue to legitimize that as long as families are living as one unit and use common areas.

Regarding affordable housing, Mr. Lindsay stated that it is a big issue throughout the county and the second family unit legislation was passed to help address that issue so people can continue to operate second family units within their home and have a renter live independently within the home or as an accessory structure outside the home. People can rent out their rooms based on the regulations the City is proposing and can board people in their house if they offer meals with rent. It would allow them to rent out two rooms without getting a permit from the City as long as they are meeting the definition of a boarding house and they provide parking space on the property for each of the rooms they are renting. Within what staff is recommending, there are still elements being retained to address the continuing need of affordable housing and the need to have extended families within the home.

Chair Nitafan agreed with Commissioner Giordano to retain the ability to convert the garage. He gave an example from his homeowner association that they allow 2 cars in a garage, and 2 cars in the driveway, and that cars are not allowed to park on a red painted curb area. He felt that the overall issue is a parking issue and it shouldn't matter how many people are living in a house and if they convert the garage they can park in the driveway. He thought that the City should look at parking issues.

Commissioner Mohsin commented that she is concerned about parking and wanted the City to look at different avenues to address the parking concern.

Commissioner Garcia pointed out that the whole point of the exercise is that there is serious parking problem in the City and the first step should be to stop garage conversions.

Commissioner Sandhu agrees that this is a parking issue and said that when you compare affordability with the parking issue, affordability takes precedence and parking should be addressed separately. He felt that if you don't park accordingly, you should get a ticket and there are solutions for parking situations. He is not in favor of not allowing garages to be converted.

Tambri Heyden, Acting Planning and Neighborhood Services Director, commented that the CAC subcommittee is still working on the parking issue and should be bringing something forward to staff in the near future, which staff will then bring to the Planning Commission.

Motion to approve Environmental Impact Assessment No. EA2004-1 and Zone Text Amendment No. ZT2004-1 (Ordinance No. 38.763) and removing Item No. 13 (Section 4.07) of garage conversions.

M/S: Giordano/Sandhu

AYES: 4 (Giordano, Sandhu, Chair, Galang)

NOES: 3 (Lalwani, Garcia, Mohsin)

IX. NEW BUSINESS

3. "S" ZONE APPROVAL AMENDMENT NO. SA2004-3 at 755 Yosemite Drive. Applicant: Lori Gilliam

Dennis Carrington, Senior Planner presented "S" Zone Approval Amendment No. SA2004-3, a request to replace seven existing cabinet logo signs with (2) new internally illuminated individual channel letter wall signs for Bottomley Distributing Company located at 755 Yosemite Drive and recommended denial.

Chair Nitafan invited the applicant to speak.

Lori Gilliam, Applicant, stated that the project is simple because the applicant is trying to update the signs that were originally installed in 1983 and it is quite cluttered and dated looking now. The new sign will clean up the look and will update the low level lumination LED sign and that the new proposed sign is energy efficient.

Motion to deny "S" Zone Approval Amendment No. SA2004-3.

M/S: Vice Chair/Sandhu

AYES: 7

NOES: 0

X. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:17 p.m. to the next regular meeting of April 14, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

April 14, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Giordano, Mohsin and Sandhu
Late: Garcia (Arrived at 8:38 p.m.)
Staff: Carrington, DeVries, Lindsay, Marion, McNeely, Medina, Pilot and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Frank DeSchmidt, Chamber of Commerce invited the public to attend “Good Morning Milpitas” on April 16th at 7:30 a.m. at the Embassy Suites Hotel to hear speaker Carl Guardino discuss transportation issues.

He also invited the public to attend Mayor Jose Esteves State-of-the-City Address on April 21st at 6 p.m. in the City Hall Council Chambers.

**IV.
APPROVAL OF MINUTES
March 24, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of March 24, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, reminded the Commission that the last two ethic code preparation workshops will be held on April 22nd and May 5th at the Community Meeting room in City Hall at 7 p.m. and all Commissioners are welcomed and encouraged to attend. Participation in previous meetings is not required and the Commission could attend any meeting to help put the ethic code together.

Chair Nitafan attended the Planner’s Institute in Monterey and noted that he attended a (RLUIPA) seminar that addressed religious land use issues and institutionalized persons act and other 1st amendment issues.

Chair Nitafan explained that the RLUIPA seminar was very timely in light of recent Planning Commission conversations about locating churches in industrial areas. He explained that some of the information he learned was that the ability to regulate religious institutions is limited because of limited discretion, neutral content, secondary effects and great proclivity toward litigation.

If the Commission decides to turn away a religious institution, the Commission would have to establish substantial burden of proof as well as compelling interest of the government for land use. He stated that the Commission and Council has to understand the limits of discretion and keep the hearing under tight control because of first amendment rights and to stick to the issues at hand and do not let the religious hearing or discussion become emotional and basically become familiar with the First Amendment Law.

Chair Nitafan asked staff and the City attorney to review the ordinance as it relates to RLUIPA and come back to the Commission to make sure that the ordinance is in conformance with RLUIPA law because the City is open to litigation and the City needs to be protected.

The Commission concurred.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

VII. CONSENT CALENDAR Item No. 3

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Motion to approve the consent calendar under New Business on Consent Item No. 3.

***3 'S' ZONE APPROVAL AMENDMENT NO. SA2004-13** *(Continued from March 24, 2004):* Request to install an 8-foot tall fence located at the rear of 244, 255 & 260 South Main Street (APNs: 086-27-013 & 014), zoned Mixed Use (MXD). Applicant: Jim Rocha, Jr. Project Planner: Kim Duncan, (408) 586-3283. *(Recommendation: Approval with Conditions)*

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VIII.
NEW BUSINESS**

**1. PRESENTATION OF
THE 2004-2009 CAPITAL
IMPROVEMENT**

PROGRAM (CIP): *Staff
Contact: City Engineer Mike
McNeely, 586-3301 and
Associate Civil Engineer
Doug De Vries, 586-3313.*

Mr. Lindsay stated that at the last meeting, the Planning Commission requested staff to come back with information on the public meetings on the Berryessa Creek improvements and noted that the City engineer will be including that within the presentation.

Mike McNeely, City Engineer, introduced Doug DeVries, Program Manager, who prepared the documents associated with the CIP and DucoJan Pilot who helped assist with the CIP.

Doug DeVries, Associate Civil Engineer, presented the 2004-2009 Capital Improvement Program (CIP) presentation on the CIP program, providing an overview of the proposed 2004–2009 Draft CIP Annual Report and recommended that the Planning Commission find the 2004-2009 CIP in conformance with the General Plan and recommend this proposed Capital Improvement Program to City Council.

Mr. DeVries presented the various CIP programs, which included projects from community improvements, parks, streets, water, sewer and storm drains.

Chair Nitafan asked the Commission to comment on the community improvement projects.

Commissioner Giordano asked for clarification on the Midtown parking garage design project on page 39 and the Midtown parking garage appraisals on page 32. She noted that the design project stated that the \$3.9 million for the property acquisitions are yet to be determined and the property acquisitions for the parking garage appraisals has begun. She asked the distinction between the two.

Mr. McNeely replied that the two projects may eventually be combined and that the appraisals are on going. He also noted that the concepts are heading towards a parking garage south of the proposed library site (senior center), and the parking garage would go back all the way to Winsor.

Commissioner Giordano asked if the appraisers evaluated the properties nearby the proposed library. Mr. McNeely explained that with any property acquisitions, staff hires a licensed appraiser who prepares an estimate of fair market value and provides those offers to the property owners. He explained that the appraisals are underway and the cost of the appraisals is a very preliminary estimate.

Commissioner Giordano asked about the \$5,000 allocation under the line item “other” and Mr. McNeely responded that he wasn’t sure and that staff would have to get back to her.

Commissioner Giordano noted that on page 39 under the midtown parking garage design, staff has yet to determine the acquisitions costs of the property. She asked where is staff getting the \$3 million dollar estimate for land. Mr. McNeely explained that it is a very preliminary estimate until staff gets the appraisals.

Commissioner Giordano noted that on page 40 under library design, the line item for improvements states \$1.1 million for the 2004-2005 fiscal year and asked what exactly will the improvements entail since the building process has not begun. Mr. McNeely noted that the money is for initial utility relocations.

Commissioner Giordano noted that on page 42 under the Sports center swimming pool improvements, staff is estimating those improvements not be done until fiscal year 2008-2009 and asked why is staff waiting three years to renovate the swimming pools and asked if anyone raised a concern in that area.

Mr. DeVries explained that the money for the swimming pool improvements is a rehabilitation of existing capital assets and is lower on the priority list than other projects. It is planned further out to make sure that staff can address it at a future time.

Commissioner Giordano is concerned about pool maintenance and noted that if staff waits too long, there will be a larger problem at hand. She asked if anyone has addressed concerns about the pool and Mr. DeVries responded "No".

Vice Chair Lalwani asked if the \$15.915 million dollars on the summary page is the total budget of the CIP program. Mr. McNeely explained that the money includes budgeted money from prior years and that staff plans to deliver projects in that amount in the upcoming fiscal year and the projects will be either delivered, awarded, studies completed and/or design completed.

Vice Chair Lalwani noted that out of the \$15.915 million, the cost for community improvements is \$7.89 million, so staff is spending approximately 50% of the total budget on community improvements. She also noted that \$3 million allocated for the library budget is 25% of the whole budget. Mr. McNeely and Mr. DeVries agreed.

Vice Chair Lalwani asked if the \$900,000 for the Midtown parking garage design is part of the library project or separate and Mr. McNeely replied that both projects are separate.

Vice Chair Lalwani asked staff if they have taken into consideration inflation rates and other unforeseen circumstances, or if the numbers presented are raw numbers. Mr. McNeely replied that the numbers presented are predicated at the time expended through June of 2005 and for all of the numbers presented in the CIP budget, staff has added inflation factors and contingencies for unexpected costs.

Vice Chair Lalwani noted that the \$3 million dollars for land and design administration on page 39 for the Midtown parking garage design, and asked what other cost does staff expect for inspection and improvements. Mr. McNeely explained that the cost of the library and parking structure have not been determined yet and when they are determined staff will be able to properly assess the cost of surveying for the construction inspection. So for now, staff doesn't want to make an estimate.

Vice Chair Lalwani asked if staff has an idea what the estimate would be to build the parking garage and Mr. McNeely replied that staff does not want to go into costs yet because staff is still looking at concepts.

Commissioner Sandhu noted that on page 24 under the Senior Center renovation, the project includes a commercial kitchen. He asked if the kitchen would serve the civic center and community center and where would the kitchen be located. Mr. McNeely explained that the expansion provision for a new kitchen facility is attached to the new facility and would tentatively serve both facilities. The concept that is being looked at is an extension to the east of the library behind the pond near the town center

Commissioner Sandhu asked if the Finance system project, GIS project, new permit systems project and desktop technology project are expenditures for City Hall. **Terry Medina, Information Services**, noted that all technology systems are City Wide expenditures.

Commissioner Mohsin noted on page 25, building improvements, the budget included work to the Police Department community room project on page 33. She asked staff for clarification. Mr. McNeely noted that the building improvements budget is incorporated into both projects and Mr. DeVries added that the Police Department Community room budget will be closed this year.

Commissioner Mohsin noted that the evidence freezer on page 37 is a whole new project and asked what type of improvements are needed. Mr. DeVries explained that the evidence freezer is a large walk in refrigerator that staff has to make building modifications on. The improvements are for the building as opposed to the freezer itself.

Commissioner Galang noted that on page 38, the sports center large gym improvements, the project deliverable amount for June 2005 is \$150,000. He recalled that a few years ago, he mentioned to staff that during the summer, the basketball gym is very hot and there are no windows. There is an entrance door to the front of the gym and a back door, however there is a solid concrete wall near the back door entrance that blocks out air. He suggested that staff put windows in the gym because a lot of basketball players complain about the heat.

Mr. DeVries noted that staff is looking into adding an air conditioning system, roof repairs and installation of insulation to make the air conditioning more efficient.

Commissioner Galang asked if staff turns on the air conditioning during the summertime and Mr. DeVries replied that there is no air conditioning in the large gym. Mr. McNeely added that staff will take Commissioner Galang's suggestion to Council and also noted that Recreation Manager Bonnie Greiner has identified improvements to the gym as a definite need.

Chair Nitafan noted that the library design on page 10 has an uncommitted balance of \$138,000 and asked if the design is completed. Mr. McNeely responded that any amount left over would be rolled back into the fund source, which was the library design and construction project.

Chair Nitafan asked if the \$2.9 million budget for design and administration is correct for the library design project on page 40. Mr. McNeely explained that there is a request for proposals right now for the library on the City's internet and once staff goes through the selection procedure and negotiation, staff will be able to come up with a better figure but as of now, that is the best estimate.

Chair Nitafan asked what is the \$1.1 million dollar in improvements being done from 2004-2005 for the library and Mr. DeVries responded that the improvements are for demolition and Haz Mat evaluation.

Chair Nitafan noted that since staff has the preliminary design, why hasn't the actual budget been included yet and Mr. McNeely responded that the utility modifications and the demolition still have to be done for the library.

Chair Nitafan stated that he always advocates community projects and wanted to know if a feasibility study could be included for a performing arts center project. Mr. McNeely responded that it is not currently in the five-year plan and that the projects are those that have been identified by staff and Council as top priority. Staff wanted to look at the performing arts project but that would come as a follow up and evaluation of what's going to happen with the senior center and if there is any money available thereafter. He explained that the all of the programs listed are what staff can budget for at the present time.

Chair Nitafan stated that staff is behind in that area because the City needs a performing arts center and that is how the City could attract people from other cities as well as keep people here instead of going to San Jose, San Francisco or Cupertino.

Mr. McNeely noted that he would pass the suggestion to Council.

Commissioner Mohsin noted that the gym improvements on page 38 would cost \$35,000 for administration in fiscal year 2004 -2005 and the following year would be \$60,000. She asked staff to explain the increase. Mr. DeVries clarified that the first year involves the initial design of the project and the construction of the project would begin in 2005-2006 and managers will be overseeing the construction of the project.

Commissioner Mohsin asked if the budget would take care of the improvements of the air conditioning and the floor in the gym and Mr. DeVries responded, "Yes.

Commissioner Giordano asked staff if they have an intended use for the interim senior center that has now been built. She noted that staff is adding another \$100,000 for improvements in the next fiscal year and wanted to make sure that staff is keeping mindful of what the transitional use will be after the senior center moves out to its new location.

Mr. McNeely explained that staff will have a valuable use for the interim senior center such as possibly leasing it out for events and doesn't think there will be a problem in finding a use for it and is assured that it will be a revenue generator. He also noted that there are several options being evaluated and staff has plenty of time to do that in the several years which will be before the permanent senior center will be constructed.

Commissioner Giordano asked what is the driving need for the \$100,000 improvement for the interim senior center for next year and Mr. DeVries replied that the \$100,000 is coming from Community Development Block Grant (CDBG) money that does not become available until July 1st, and when it becomes available, the plan is to use it on equipment for the kitchen. Mr. McNeely added that staff is finishing up on the design and will be going out to bid.

Chair Nitafan asked the Commission to comment on Park projects.

Commissioner Giordano noted that the projects were reviewed by the Parks and Recreation Commission on April 5th and asked if they had any recommendations. Mr. McNeely noted that the recommendation was noted, receipt and filed.

Commissioner Sandhu noted that the Alviso Adobe renovation and site improvements on page 57, and asked if this is the same building that has issues with the Milpitas historical society.

Mr. McNeely explained that staff has been meeting with the Calvary church and are now in agreement with the concept that the City would acquire some property behind Calvary for a parking lot with an access possibly off of Uridias Ranch Road. Staff is in the process of having monthly meetings with Calvary church and is preparing visual aids on what the parking lot would look like and is meeting again the week after next.

Mr. McNeely recalled that this is a pretty giant step because the church wasn't willing to even talk to staff for quite some time. Mr. McNeely felt that it would be a win/win situation because many of the users of the Adobe park will be the church members.

Commissioner Sandhu asked about the roof improvements to the Adobe and Mr. McNeely replied that the roof has been repaired.

Commissioner Galang noted that under the comments section on the athletic court resurfacing on page 61, it states that Calle Oriente will require more extensive work due to extensive asphalt damage. He asked if that was the basketball court or handball courts. Mr. DeVries responded that he took a trip out there and it was primarily the basketball court that needed work on.

Commissioner Galang read under the comments section that at Yellowstone park, two of the four courts have unstable bases and are heaving up and asked which courts are they. Mr. McNeely responded that staff will have to check and get back to him because staff is in the process and investigating and prioritizing each court and balancing it against the available resources to see how many courts can be repaired.

Vice Chair Lalwani commented on the Art in Your Park coordination program and is very happy that the Arts Alliance and the City are working with the local business people. She suggested that the City make more of an effort in reaching out to the business community and that businesses would want to put their name on the art displays.

Commissioner Mohsin asked if there is an allocation of money available where the community could come out and choose the kind of art they want in their park before the Alliance purchases the artwork.

Mr. DeVries explained that there has been some community involvement in past projects and would have to get back to Commissioner Mohsin. Mr. McNeely added that Mark Rogge has been very involved in working with the community to collaborate as much as possible and will talk to him.

Commissioner Giordano recalled that when she first became a member of the Commission a year and a half ago, the meetings took place at the school district site and the Art commission would bring art for the Planning Commission to approve.

Vice Chair Lalwani noted that Hillcrest park, the Arts Commission did reach out to the community and invited them to participate and categorize the art and decide what they wanted. The Arts Commission would then come up with some ideas and bring it back to the residents and everyone would vote. She added that the Art in Your Park Project is very community friendly.

Chair Nitafan asked the Commission to comment on street projects.

In response to Chair Nitafan's question about the Streets budget, Mr. McNeely replied that staff programs the money that is available in regards to redevelopment money and can only use the money for improvement within the redevelopment areas and the specific purposes that the bonds were sold. In regards to resurfacing money, staff is limited. Staff can use some redevelopment funds and street funds. Since state funds have dried up in regards to help for resurfacing projects staff is going for as much federal money as possible and identified the projects that have the biggest benefits for the community. He also added that staff will be utilizing a computer system for resurfacing that is state approved for monitoring the condition of deteriorated streets.

Commissioner Mohsin noted that the Audible Pedestrian Signal Installation on page 100, the \$500 maintenance cost and improvements is \$61,000 and is funded by CDBG funds. She asked what is the money going to be used for. Mr. McNeely responded that the cost are always for new improvements but what is listed at the top are the annual maintenance costs that staff is projecting to maintain the improvements and that comes out of a different fund. That annual maintenance cost at the top is not reflected in the CIP program book because that's out of the city's operating budget when the improvements are installed.

Commissioner Sandhu asked if the Alt Alignment Study Pedestrian / Bicycle Over crossing project on page 115 would be near the Union Pacific railroad. Mr. McNeely stated that about a year and a half ago, staff received a grant and the City had to put up 20%, and 80% was through a grant with VTA. Staff is looking through alternatives for a bicycle pedestrian overpass from the Gibraltar area over to the Great Mall area and VTA is committed to finding 80% of the funds through grant funds for the construction there, so later this year, staff will probably be able to tie down the property owners such as Solelectron and the Great Mall.

Chair Nitafoan noted that the Calaveras Blvd. Railroad Over crossing Landscaping on page 110, and asked if this project is additional improvements of the one that was done on Carlo street and if the traffic problems were resolved. Mr. McNeely explained that there have been some landscaping and maintenance installed on the overpass itself and the ultimate project will be finished up in 2005 and 2006 on the overpass. As for Carlo Street, these are two separate projects in the streets program. Mr. McNeely recalled that staff is in the process of doing improvements at Carlo Street and Able Street and that would include closing off the eastbound access road to Carlo street direct and looking at concepts. He also noted that Mr. Lindsay is well aware that if you eliminate the eastbound lane on Carlo, staff would work on a concept to enlarge the mini park and generally improve the aesthetics of the area of Carlo Street and the eastbound Lane would be abandoned.

Chair Nitafoan stated that the Carlo intersection is very dangerous, especially when cars merge onto Calaveras.

Mr. McNeely stated that later this year, staff will be embarking on another CIP project in the streets section which would add an additional right turn lane from northbound to eastbound Calaveras and noted that it is a million dollar project, half of which is funded by previous contracts with Cisco systems developments mitigation and staff has until 2005 to spend that money or lose it.

Vice Chair Lalwani asked for clarification on the Calaveras Blvd. Over crossing. Mr. McNeely explained that the right turn lane going north would merge onto Calaveras Blvd. In doing so, staff would add the one northbound to eastbound lane and also eliminate one of the conflicting movements, which is that slip ramp onto eastbound Carlo. He thought that it would be a vast improvement for the intersection, and then someday the overpass would be widened.

Vice Chair Lalwani suggested that a space be added between eastbound and westbound Calaveras and Mr. McNeely replied that it would cost 40 million dollars to do that.

Mr. McNeely recalled that the Council and staff submitted the project in the VTP 2030 plan for priorities countywide, and staff is happy to report that it was ranked no. 1 in the county for funding, that means No. 1 for funding sometime in 2008 at the earliest, and it would be an 80/20 match and the City would have to come up with 20%.

Rob Means, 1421 Yellowstone, commented on the on The Alt. Alignment Study Pedestrian/Bicycle Over crossing on page 115 and noted that this project is of interest to the community. He explained that the crossing has been identified in the general plan and trails master plan, bicycle plan and the midtown plan and all seem to indicate that the City will see a crossing of the railroad tracks right and will connect Yosemite with Curtis. Unfortunately, Solectron has misgivings about a pedestrian over crossing such as security concerns and the net result of the structure is to build a structure that would make residents go around the mall. Mr. Means felt that the over crossing is being built at the wrong place.

Mr. Means noted that an alternative technology of personal rapid transit (PRT) by encapsulating people by a PRT cab may alleviate the concerns that the security people at Solelectron have, meaning that staff might be able to get a crossing where it is needed. The Commission has an opportunity to make a contribution to take a look at PRT crossing and he is starting to solicit contributions from the community on behalf of taking a look at the environmental impacts of PRT and noise and traffic congestion. He felt that the City may end up spending \$100,000 from the City on something that is just not going to fit quite well with the community.

William Connor, 1515 N. Milpitas Blvd., noted that the most important thing to him is to look and see what is going to make Milpitas more efficient and savings benefits for the City. He would like to see a street crossing from Yosemite all the way into Curtis and pointed out that the people on Comet Drive don't want to see traffic. He suggested that building a ramp from Yosemite into Curtis and heading into the back corner of the Great Mall would make it easier for everybody leaving the mall. He also suggested that an intersection at the corner of Yosemite and I-680 would be more efficient. He felt that the City would save money and the mall would see an increase in sales.

Mr. Connor noted that the City would be spending \$100,000 a year for BART over the next five years and announced that BART gave a deadline for 2025/2050 for the new BART system. He felt that the year 2025 is a false number because he didn't think BART was ever going to come to Milpitas and this is the reason that alternative transportation is needed. He agrees with Mr. Means about utilizing a PRT system and he is pushing for magnetic levitation. Mr. Connor also heard from a company that they received a big contract to build a PRT system in Washington and thinks that Cities will start seeing some money come from Washington DC and funding for some new transit systems in the area.

Mr. Connor also stated that he called Union Pacific Railroad to see what lines and real estate are available in the City of Milpitas so that staff can really make proper plans for the future. He felt that five years from now, Shapell will be moving out of its building and Mervyns would be doing the same, so he thinks the City should start to plan ahead and he gave the CIP project an F+ and suggested to send it back and come back with some better ideas.

Chair Nitafan stated that he would take Mr. Means and Mr. Connor's comments and incorporate them into the recommendations to Council, however he noted that there have not been any feasibility studies done for the PRT system as of yet.

Chair Nitafan asked the Commission to comment on water projects.

Chair Nitafan asked if the City's water system has safeguards in place to protect from a terrorist attack. Mr. McNeely responded, "Yes", and noted that the City has undergone an extensive study of what needs to be done and many activities are ongoing, some of which he is not at liberty to detail because of the subject matter itself. He explained that the federal government has dictated that all water systems have to be evaluated in that matter and he has one engineer working with the Public Works supervisor in the last six months and are strategizing and have developed several improvements that can be made and are being done.

As for non-security items, Mr. McNeely noted that staff has done an extensive 20 year plan to evaluate the utility system for the proper maintenance and rehabilitation for the infrastructure when it is needed and the current water and sewer rate structure reflects that plan as does the CIP document. The projects that were identified in the 20-year plan are also included in the five-year plan. He noted that it is on a fundable basis, and staff didn't want to increase water rates by 100% the first year to fund the needed improvements, but there is an extensive long term plan in place.

Commissioner Mohsin asked if the City is working towards improvements for energy, electricity and power. Mr. McNeely responded that staff is looking at opportunities because the City is not a power agency and has to maximize ability. For instance, the City has one co-generation facility at the Sports Center and staff is working on re-negotiating contracts for it, however, since the City is not a utility in that regard, the City doesn't have the capability like some other cities do. Other cities have a utilities generation capability and still have to rely on outside PUC regulated agencies.

Chair Nitafo asked staff for clarification on the Los Coches Water Valve Replacement project on page 149. Mr. DeVries explained that it is a replacement of four valves along Los Coches Boulevard in an industrial area with a large amount of water use in the area. If there is a break in the line, some of the businesses nearby would be affected because staff wouldn't be able to isolate the break and because some of the valves are not working well and it is very difficult to isolate the break in the area.

Chair Nitafo asked if there is any impact to the nearby residential area and Mr. DeVries responded that it is more of an impact to commercial and industrial areas specifically Seagate Technology.

Chair Nitafo asked the Commission to comment on sewer projects.

Commissioner Giordano asked about the large Main Sewer Pump Station Improvements project on page 189 and noted that staff is looking at \$15 million in improvements in the year 2008-2009, and asked where will the funds be coming from. She also noted that \$5 million will be coming from developers and asked staff to clarify.

Mr. McNeely explained that the developers would be asked to pay their fair share of increased flows above the master plan amounts and that staff is trying to think ahead as part of the 20-year plan. He can't be for sure that \$15 million dollars today is correct, however, the funds wouldn't be expended all over one year.

Commissioner Giordano asked staff how they came up with \$15 million dollars in improvements. Mr. DeVries responded that staff wanted to include the Main Sewer Pump Station project in the five-year plan so that everybody is aware that it is coming and staff would have to deal with it at some point.

Mr. McNeely added that the \$15 million is an estimate in the fifth year of the CIP and the estimates for the 2004-2005 fiscal year are pretty accurate. He noted that staff does have a consultant looking at the Main Street Pump station now because there will be work out there associated with the current year in regard to moving the Corp yard out there and demolishing some of the buildings in the underground structures that will be demolished.

Commissioner Giordano asked if the \$5 million dollars in the sewer fund will be coming out for that projected cost, or will the money be recovered over an increase in sewer fees over the next five years. Mr. McNeely recalled that everything falls back to the 20-year plan. Staff is programming some of those funds out in the five years because that's about when they will be available for the 20-year plan.

Commissioner Giordano asked if there is a contingency fund being set up now and Mr. McNeely responded, "Yes" and it is part of the 20-year plan called a rehabilitation fund. He explained that the sewer fund will be easier to set up because the sewer fund has money available. He also pointed out that the water fund is a little more difficult and will take staff a few more years to develop.

Commissioner Garcia arrived at 8:38 p.m.

Chair NitaFan asked the Commission to comment on storm drain projects.

Vice Chair Lalwani asked what is the life expectancy of the pumps and how often do they need repair. Mr. McNeely responded that the pumps are expected to live for 50 years, however in looking at them, the pumps haven't lasted 50 years, so staff is looking at modifications of to the veins and in-flow so that the pumps all operate efficiently.

Mr. DeVries added that staff is looking at the veins and have observed that the diesel engines are starting to overheat during high flow situations and getting near to not being able to keep up with the in flow of water coming into the well, so staff is investigating why that is happening and expecting that to make some modifications to the pumps stations in order to correct that problem.

Vice Chair Lalwani noted that since the life expectancy of the pumps is 50 years and technology has really improved, does staff make improvements after 25 years to make the pumps more efficient. Mr. McNeely explained that it is a judgment call based on the performance of the pumps and minor maintenance for the first 20 years of the pumps is usually required, however he noted that some of the pumps are exhibiting characteristics that make staff wonder if the design wasn't as optimal as it could have been.

Mr. DeVries add that staff has to watch for the reliability of the pumps and the engines and the systems itself and if the reliability is showing weakness then staff needs to address the problem whether it's the pumps or the engines or the veining.

Chair NitaFan asked if the Abbott storm drain pump replacement is another improvement in the area since Abbott is a flood zone area. Mc McNeely noted that Abbot has been identified as a good idea if it can be funded and is similar to the utility water and sewer master plan done a few years back when staff did a storm drain master plan and Abbot was identified. Mr. McNeely noted that if staff does not do the project on Abbott, staff will be spending more money on the downstream pumping facility at California Circle and the big pumps there at the lagoon will have to be upsized. He noted that the Abbott project is an ongoing identification of a need that has been identified and that needs to be renovated.

Chair Nitafan noted that the Commission needs to make a motion to include the Commission's recommendations.

Mr. Lindsay noted that the motion for the Commission is to find the fiscal year 2004-2009 CIP in conformance with the general plan and recommend the proposed CIP program to Council.

Commissioner Giordano moved the motion and Commissioner Sandhu seconded the motion.

Chair Nitafan noted that he would like to include a performing arts center as part of the recommendations to Council for his reasons mentioned earlier in the meeting.

Mr. McNeely responded that if there is consensus among the Commission, he would include the performing arts center as one of the recommendations to Council and Vice Chair Lalwani agreed with Chair Nitafan.

Commissioner Sandhu felt that that the additional recommendations should not be part of the motion and Commissioner Giordano echoed Commissioner Sandhu's comments.

Mr. McNeely suggested that the Commission adopt the first motion and then summarize the comments that would be passed onto Council.

Motion to find the 2004-2009 CIP in conformance with the General Plan and recommend the proposed Capital Improvement Program to City Council

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Garcia) – Absent at the beginning of the meeting.

Vice Chair Lalwani made a motion for the Commission to include all the comments and feedback to the Council, which includes the performing arts center and Commissioner Mohsin seconded the motion.

Mr. Lindsay clarified that staff does have the minutes which is a reflection of the discussion that occurred, however he is not sure when the item will be before the City Council and whether the minutes will be ready. Staff would recommend that if there is specific items that is of special concern to the Commission that those concerns be addressed and request that staff forward those specific items as Planning Commission comments onto the CIP as a preferred alternative, or as the motion is currently worded, the minutes would serve as the record of the planning Commission comments as those would be provided to the Council during its consideration to the CIP.

Vice Chair Lalwani wanted to make the comments more specific and so in her motion, she included what the Chair had suggested about performing arts and Commissioner Mohsin echoed Vice Chair Lalwani's comments.

Commissioner Galang added that his suggestion to add windows in the basketball court be recommended to Council.

Commissioner Giordano added that the future use of the interim senior center be discussed with Council.

Commissioner Mohsin suggested that she would like to see some innovative form of transportation that would put the City up on the map as being something different. She doesn't know what research the City has done and any alternate other mode of transportation, however she sees a great need where a lot of people are not driving and their licenses are not being renewed, and the elderly are not driving and bus routes are an issue. She suggested an alternate mode of transportation.

Vice Chair Lalwani asked Commissioner Mohsin if she would recommend that the Council look into the PRT system and Commissioner Mohsin said that PRT could be included as well.

Motion to recommend to Council a performing arts center, adding windows in the basketball gym, looking at the future use of the interim senior center and looking at an innovative form of transportation such as the PRT system.

M/S: Lalwani/Mohsin

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Garcia) – Absent at the beginning of the meeting.

Mr. McNeely noted that the comments will be going forward to Council on April 20th.

2. ADMINISTRATIVE PERMIT NO. AD2004-5: Discussion on impervious surface area as it relates to wood decks within the hillside zoning district. *Staff Contact: James Lindsay, 586-3274.*

James Lindsay, Acting Planning Manager, presented Administrative Permit No. AD2004-5, a discussion on impervious surface area as it relates to wood decks within the hillside zoning district and noted that no action is necessary.

He noted that the Planning Commission requested staff back in the fall of last year to come back with an analysis of how wood decks are treated within the hillside ordinance as it relates to impervious surface areas. Staff has provided the history that has lead to the current practice including a recent City Attorney's opinion regarding how the issue of wood decks relates to impervious surface coverage as well as historic Planning Commission and City Council minutes that relate to the issue. As it stands today, staff is continuing to apply the City Council's decision that wood decks are treated as impervious surfaces within the hillside district with the exception of any second floor balconies, which aren't at ground level, and those are not treated as impervious surface area. He opened it up for Planning Commission discussion.

Chair Nitafan noted that since the Council already decides the ordinance does the Planning Commission need to make a recommendation.

Mr. Lindsay explained that when the ordinance was adopted in 1992 the question came up two years later in regards to the intent of impervious surface regulation, though it was very well described, it didn't include every conceivable element that could come up as impervious surface area. The question of whether wood decks were included was discussed in 1994 and the decision of the Council at that time was that yes, wood decks were meant to be included and categorized as impervious surface area. The council clarified the intent and that's at this point, how staff has continued to apply it.

He noted that if the Planning Commission wishes to forward a recommendation to City Council, to reconsider that, or to have the issue be looked at again, the Commission could very well do that and staff can forward that as a discussion item for Council consideration, but staff did provide this as a recommendation and the request was just to come back with information.

Commissioner Giordano noted that she was the one who asked staff to come back with the information because she wanted to make it very clear, particularly to an applicant when they come in. She recalled that an application was scrutinized last year, and the applicant kept coming back and trying to make the ordinance fit to what they were trying to do. She believes that the decks were raised and that terminology wasn't in the ordinance and it did create the ability for the ground water to penetrate the ground. She has read the material and felt comfortable with the Council's decision of including the decks, again. She wanted to make sure that in the attorney's letter of March 31st, that everyone is clear that when an applicant comes in to decide what they are going to do with their property, the Commission is going to reduce the amount of subjectivity. She also noted that it states that the decks and related structures could be considered impervious surface if they significantly reduce ground water penetration and asked who determines that. She asked Mr. Lindsay if he is comfortable with the City Attorney's determination of how the decks are going to be treated.

Mr. Lindsay replied that staff is comfortable with the City Attorney's opinion and will continue as in the past to inform applicants as they make requests to build decks in the hillside that they would be counted as impervious surface area. He explained that the particular applicant that came back several times in the fall built their deck without benefit of permit and never came to the City to inquire about the regulations. Therefore, staff was unable to let them know what parameters they had to work with which was an unfortunate circumstance. Staff has consistently relayed to citizens that are desiring to build decks in the hillsides, that yes, this would be counted as impervious surface area and to build it staff would need to do an impervious surface calculation. If they currently are at their maximum impervious surface area then they would need to come up with an alternative, for instance, removing a paved area to build the deck, so the amount of impervious coverage stays the same.

Commissioner Giordano asked about the discussion at the hillside review committee group where the slats had space between and allowed for water to penetrate and asked how would that be handled.

Mr. Lindsay replied that, the Council's direction does not specify any level of openness or allowing water to penetrate through. The type of wood decks that are being constructed are tight board decks just because of the nature of safety and high heels and various things that could be trapped. If at any time, the Council provides different direction saying that wood decks that have x percentage of open area would then be considered impervious surface area we would apply that. But at this time, staff is using the current intent that all decks no matter what the spacing between the boards are considered an impervious surface.

Commissioner Giordano asked about the elevation of the decks.

Mr. Lindsay commented that staff would again apply the impervious surface definition to all decks, with the exception of the second floor balconies and explained that the balcony can be easily defined as something that's not touching the ground and is usually cantilevered from the building. All decks are raised off the ground at some level due to the construction, but if they are built on poles or any similar feature, they still created in an impervious surface. The decks have a much larger coverage area than a balcony would. Balconies usually don't extend far beyond the roof overhang because the structural engineering that is required doesn't promote large surface area. A wood deck, can create a large surface area and still be raised above the ground, so I still think they are different and very easily defined at the counter in working with customers.

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:01p.m. to the next regular meeting of April 28, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

April 28, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Lindsay, McNeely, Nadal and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Rob Means, 1421 Yellowstone, stated that a number of Cities are concerned about BART plans and have been questioning if the plans are financially responsible and are also concerned because the Board of Supervisors stated that many of the projects promised to voters in the 2000 measure A plan will not be built because of the economic downturn as well as VTA's commitment to make BART extension operationally by 2015.

Mr. Means commented that there is a transit case in Los Angeles that states it is illegal to discriminate against current passengers in favor of potential passengers and felt that the case relates to the serious concern of not being able to continue the level of service that the citizens have come to expect from VTA if BART continues.

**IV.
APPROVAL OF MINUTES
April 14, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of April 14, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

Commissioner Giordano asked staff if the Commissioner's questions from the last meeting regarding the CIP discussion would be answered. **James Lindsay, Acting Planning Manager**, responded that it would be agendaized at a future meeting once the Council reviews the CIP, the Council will consider the Planning Commission comments.

Mike McNeely, City Engineer, added that staff is working on a memo to address the comments to the Commission.

**V.
ANNOUNCEMENTS**

Mr. Lindsay announced that the Santa Clara County housing trust is sponsoring an affordable housing tour that will be on Friday, June 11th from 8:30 a.m. to 1 p.m. The Commission could register directly with the website, or contact the office

Vice Chair Lalwani invited residents to attend the Milpitas Global Village international event, event on Saturday, May 1st from 11 a.m. to 4 p.m.

On behalf of the Rotary Club, Commissioner Giordano invited the public to attend the third annual carnival on Thursday, May 13th through Sunday, May 16th, located at the Wal Mart location.

Commissioner Garcia thanked Chair Nitafan for bringing back information of Religious Land Use Issues and asked staff when it would be agendaize for discussion. Mr. Lindsay replied that the City Attorney would prepare a presentation for the Commission within the next meeting or two.

Commissioner Garcia asked staff for the status on second family units (granny units) and asked what are the rules now since there was a change from Sacramento. Mr. Lindsay replied that staff could provide another discussion item and have the City Attorney provide a legislative update on the current status. He noted that there is pending legislation that is affecting second family units and that the City recently amended the zoning code last year in response to the legislation which allows more second family units now than before.

VI. APPROVAL OF AGENDA

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VII. CONSENT CALENDAR

There were no items to be considered on the consent calendar.

VIII. PUBLIC HEARING

1. REVIEW OF THE BART EXTENSION TO MILPITAS, SAN JOSE, AND SANTA CLARA DEIS/DEIR COMMENT LETTER. Staff Contact: Dennis Carrington, (408) 586-3275.

Mr. Lindsay announced that he has extra copies of the Citizens guide for the environmental document and noted that the Commission was provided it in an earlier packet. In addition Dennis Carrington, Senior Planner, Mike McNeely, City Engineer, Janice Nadal, Transportation Planner and Eddie Torrez with RBF consulting are available for questions.

Dennis Carrington, Senior Planner, presented the review of the Bart Extension to Milpitas, San Jose and Santa Clara DEIS/DEIR Comment Letter and recommended that the Planning Commission recommend that the City Council approve the Draft comment letter on the DEIS/DEIR.

Mr. Carrington explained that the BART extension is from Warm Springs, through Milpitas, San Jose, and Santa Clara. Staff has drafted a response letter to VTA and federal and state laws require staff to look at alternatives for the project. The no action alternative will encompass existing year 2000 roadway and transit networks, plus any program improvements through 2025, that includes the BART extension to Warm Springs, VTA light rail, bus fleet expansion, bus rapid transit, commuter rail upgrades and automated people mover to the airport.

He explained that the new starts baseline initiative is required by law and is the no action alternative plus expanded bus service in the corridor plus three new bus way connectors from I-680 to Warm Springs and from Warm Springs to I-880 and there would be an express bus loop that would go through Milpitas. The BART extension encompasses 16.3 miles and there would be seven stations plus the future unfunded south Calaveras station. There would be a maintenance facility and the lines would have six-minute headways so trains would be coming on average every six minutes and would be serviced from the East Bay to San Francisco. There would be some alignment and station options and in the future, 83,600 riders are predicted by 2025 and revenue service would start around 2014.

Mr. Carrington explained that the environmental document was issued by VTA on March 16th for a 60-day review period and all of the Cities have to respond within that period in order to have the drafters of the environmental document respond to the comments.

Commissioner Giordano asked how was the public notified that the draft review was available. Mr. Carrington responded that VTA did a public notice to everyone owning a property within 1,000 feet of the BART line. City staff also mailed out a notice to every resident in the City of the VTA meeting, the Planning Commission meeting and the May 4th Council meeting. He added that the City has until May 14th to respond to VTA and the draft letter goes forward to Council on May 4th.

Mr. Carrington stated that staff is concerned about land use and the Montague Capitol station design because it will be a major station that will be located next to light rail, BART, automobiles, buses, pedestrians, the Great Mall. Staff hopes to complete a 100 acre transit oriented development land use plan around the BART station to ensure that the land use is regional in nature and connects to the Midtown area around it.

Staff felt strongly about maximizing transit oriented development and minimizing property acquisition to make the project economically feasible and is recommending a compact design to the station itself to encourage pedestrian and bicycle travel. The alternative design would have a plaza that would have transit related retail and a possible elevated walkway that would go over to the light rail and continue to the properties to the south west of Capitol and Montague, where someone could walk across the bridge to the light rail and walk over to BART. The station should be linked physically to the light rail and to the property to the southeast and linked to the Great Mall.

The alternative design also provides a no fee underground connector to the Great mall because BART will be below ground. A well-lit safe corridor is suggested where someone doesn't have to cross Montague.

Mr. Carrington commented that VTA is proposing a bus transit area on land that would have to be acquired at grade. There would be a parking garage located east of the track way and there would be area between the garage and Gladding court that would not be developed. The plan shows potential future transit facilities and is very unclear about what those would be. Staff feels that the design isn't very mature, that not a lot of thought was put into it, and is concerned about how the proposed plan would relate to the Midtown area since it is an important hub. Therefore, staff had a consultant prepare an alternative design.

Mr. Carrington explained that the new alternative is a much smaller footprint and the area that would be a transit plaza would not be required to be purchased. It would be developed by the market for commercial purposes instead of having a parking lot and would have instead a vibrant transit oriented development. The garage area would be expanded further to the east than the BART proposal and would have immediate access to Montague Expressway. Staff felt that the alternative design offers much more efficiencies and provides bus patrons immediate access to the transit plaza, and they don't have to cross Milpitas boulevard. The other benefit is that there would be much less purchasing of land to do this so the project would be less expensive.

Mr. Carrington stated that there would be two revenue gates, one next to the parking structure and one that would serve the Great Mall and the hotels, and hopefully other transit oriented development that would be located on the north side of Montague and east of Piper.

Mr. Carrington stated that for a 2025 design, assuming with a minimum operating segment (MOS), that Berryessa would be the end of the line, more parking may be needed if Milpitas is going to be an end of the line station and that is why more analysis is needed under MOS conditions.

Commissioner Garcia asked if the alternative design is for residential or commercial. Mr. Carrington stated that residential is a really good mix for transit. Also, residential helps decrease crime by having people living there and housing will be in demand. He stated that staff would be sending out an RFP to hire a firm prepare a transit oriented plan for around 100 acres.

Commissioner Giordano noted that in the summary, significant parking impacts occur at the station and asked if the MOS will still be in place past 2015. Mr. Carrington stated that given funding issues, there could be a minimum operating segment that is a short extension of a couple of stations into the project if that is all that is funded. For example, if BART were built and Montague/Capitol station is the end of the line and it is not funded, then VTA and BART would need to do more analysis.

Mr. Carrington stated that staff is concerned where BART would cross Dixon Landing Road. BART has analyzed three options and prefer an aerial option where BART would be on a bridge up and over Dixon Landing Road and the railroad would be at grade. The City wants to go on record stating that it is not in favor of this option. Staff prefers for either BART to be at grade and Dixon Landing Road goes underneath it or to have a retain cut where BART goes underneath Dixon landing Road. Again, staff felt that VTA did not do enough analysis.

Mr. Carrington explained that the pros for the at grade option where Dixon goes under BART and the railway is that it separates the railroad from the roadway, eliminates train noise and traffic conflicts and would have minimal noise impacts to area residents and businesses. There are sound walls at grade that have been built and are in place that would continue to be effective and there would be less visual minimal impacts because the train would be at grade.

Mr. Carrington explained that the cons for Dixon Landing Road going underneath an at grade BART is that its design speed could be fairly slow, about 35 to 40 miles an hour and access to three driveways would be impacted, so staff would have to find design fixes to these problems. Also, it would cost 8 million dollars more than building a bridge over.

Mr. Carrington explained that the pros for the retain cut where BART goes underneath Dixon and the railroad remains at grade, is that there would be minimal noise and visual impacts because BART is underground and it is not visible and the cons is it would cost 11 million dollars.

Mr. Carrington explained that staff does not support the aerial option and is not convinced that sufficient analysis of noise, vibration and aesthetics can be mitigated or have been analyzed well enough. The pros for the aerial option is that it is the least costly of the three alternatives and would avoid long term traffic impacts to Dixon. The other options could conceivably close Dixon Landing Road or restrict access to it for a significant amount of time until the structure is completed.

The cons are that there would be significant noise impacts with an aerial structure, BART would be above the existing sound walls and would have its own sound walls on the structure itself. He explained that the design that was included in the EIS shows a sound wall on the aerial structure but doesn't come far enough south to provide shielding for trailer parks immediately to the east of the tracks, which would not be good for the elderly, and the structures are not designed to withstand the noise and vibration that would come from BART.

Commissioner Giordano asked what is the City's influence versus Fremont's influence, and who would win the dispute of the aerial structure since Fremont wants it. Mr. Carrington explained that the aerial structure affects Milpitas, not Fremont, and that BART is trying to save money with the least costly alternative.

Mr. Carrington explained that the City hired RBF consulting to investigate the noise issues with BART and that the analysis is included as attachment C.

Mr. Carrington stated that the third issue staff is concerned about is the railroad. Milpitas supports the abandonment of the Union Pacific Railroad spur line north of Montague rather than relocating it and it would significantly reduce project costs and would avoid disrupting a public park and private properties and would support future development in surrounding areas.

Mr. Carrington explained that there are two alternate locations (one in Fremont and one in Milpitas) for a track that looks like a "wye", and what it does is that it allows a train to turn around and go the other direction. Staff is opposed to having the "wye" in Milpitas. One of the concerns is that it would move from where there is an existing "wye" over to the industrial park off Gibraltar. Looking at the plan, staff would lose 50 to 60 parking spaces and all or part of an existing building, which would have negative impacts to the city. It would also negatively impact the transit-oriented development across from the Montague/Capitol station. He explained that there are approximately 40 acres of land that staff would like to see be included in transit oriented development and if there is a railroad "wye" next to it, that negatively impacts half of it and negatively impacts the balance. It would also involve a 20-foot wide take from City park or private park and the Great Mall and would take about 40 parking spaces from the Great Mall so staff is in favor of the option that would put the "wye" in Fremont.

Commissioner Garcia asked where is the Union Pacific spur line located at and Mr. Carrington referenced the aerial photo.

Mr. McNeely added that the spur line is north of Montague and Capitol; passed Yosemite, and has four sub spurs off the main line. He explained that there are five customers that would have to be compensated if the spur lines were removed and VTA is interested in removing those and paying off the customers.

Commissioner Garcia asked how does the compensation take place and Mr. McNeely explained that VTA could provide truck service that would have to take it to the closest rail facility.

Commissioner Garcia asked if the truck service would be long term and who would pay for the service. Mr. Lindsay responded that the service would be long term and VTA would have to pay for the alternative service. Staff is expecting that approximately two or three customers are being served from the rail line and staff had the opportunity to go out and look at the different service points and are in the process of talking to Union Pacific about abandoning certain segments of the line because the service is no longer needed. If VTA were to discontinue service they would have to work out an arrangement to pay for that and that is a long-term expenditure.

Mr. McNeely added that it might be cost effective and much cheaper because in order to construct the facility to cross the railroad, BART will be underground and that is where the parking structure is near the Great Mall, and goes all the way south of Capitol. There has to be a huge structure over BART to support the spur lines, which could cost between 20 to 30 million dollars that BART could save, plus BART would have to purchase the right away up on the west side of the railroad through the Great mall and Parc Metro and the future park at Curtis.

Commissioner Galang asked what is the standard height of the aerial structure and Mr. Carrington responded that the structure would be 24 feet above grade.

Commissioner Galang asked if the aerial structure could be increased by several height and Mr. Carrington responded that there has to be a minimum height in order to meet engineering requirements and to have large vehicles pass underneath it, so BART doesn't want to build it any higher than they have to but there is a certain minimum that they would have to actually build above the grade of Dixon Landing Road in order to have large trucks on Dixon pass underneath the tracks.

Commissioner Galang asked how would BART be built underneath and Mr. Carrington replied that it would go under Dixon landing or to have Dixon landing go underneath an at grade BART and there would be tunneling options.

Mr. McNeely added that if Dixon goes under, the way to do that would be possibly raising the railroad and BART a few feet, that is the only way that option would come into play.

Mr. Carrington stated that staff is concerned about parking impacts occurring at the BART station if it is the end of the line and is still in place past 2015. It's hard to project out in the future what the parking demand would be and staff doesn't think VTA has done a very good job of it, so in the comment letter, staff is asking VTA to do a better job at analysis so staff can know what they are going to be up against.

Commissioner Giordano asked if staff is looking at parking structures of various levels and Mr. Carrington responded the proposed design does show a parking structure adjacent to Montague plus a parking field and bus transit area to the south, an area that would have to be acquired. Staff's option shows a much larger parking structure and would have a much more compact design with a larger parking structure that would go all over to Gladding Court. It would be several stories high and would build as much parking needed and is recommending a transit center down on the ground adjacent to Montague and staff felt it is a good option to consider.

Mr. Carrington stated that a detailed 2025 parking analysis should be undertaken that looks at the worst case should the Berryessa station be delayed beyond 2015 and hopefully the city will not have to deal with this and the entire 16.3 miles would be constructed.

Mr. Carrington went on to explain staff's concerns about the significant and unmitigable impacts to the views of the area around the aerial structure around Dixon, stating that it is unattractive. It would be the only area in Milpitas that would be above grade so that someone arriving in Milpitas, the first thing they see when they get off the freeway instead of seeing the mountains in Milpitas is the elevated structure.

Mr. Carrington showed an image taken out of the EIS that shows what the BART aerial structure would look like that would be several hundred feet long. What was not shown is the sound wall that would actually make the structure much larger in appearance so it is an inadequate representation of the visual impacts.

Commissioner Mohsin asked how tall would the sound wall be and Mr. Carrington replied "ten feet"

Mr. Carrington noted that staff did comment on transportation, community services and facilities, hazardous waste, land use, noise, vibration, security and system safety, socioeconomics, utilities, visual quality and aesthetics, water resources, water quality, flood plains and construction, so the letter is quite lengthy. Staff recommends that the Commission close the public hearing and recommend that the City Council approve the draft comment letter on the BART extension draft EIR/EIS.

Commissioner Sandhu asked about the 100-acre land near Montague and asked where is the land located and if buildings have to be demolished. Mr. Carrington replied that there is a wide variety of industrial land uses that are somewhat older and if someone was to look at an aerial photo, they would see trucking companies with scattered trucks and otherwise very large vacant lots. North of Montague there is some older industrial land and structures and there is some new structures as well. It comes down to relative value of land and what could be done with a transit area plan which would put a lot of value under a 100 acres or so of land right next to a regional transportation hub and the natural market forces will raise the value of the land.

Commissioner Sandhu asked if the City will condemn the property and will be able to buy at market rate. Mr. Carrington responded that BART and VTA would buy any land necessary for the construction of the garage, station, related facilities, track ways, extension of Milpitas Blvd., transit centers, and all of that would be purchased. Other lands within this theoretical 100 acres around the BART station would not be purchased and would not be condemned and would turn over at the natural rate determined by the market.

Chair Nitafan pointed out that the Commission normally is provided the EIR document and this time, did not receive it. Mr. Carrington noted that the Commission was provided a citizens guidebook and were also provided a CD ROM, which has the entire document on it.

Chair Nitafan still felt that the Commission should have received a hard copy of the document.

Chair Nitafan asked who drafted the comment letter and Mr. Carrington replied that it was planning staff, including himself, Joe Oliva, Principal Transportation Planner, engineering staff, fire staff, and other agencies who have looked at the letter and made their comments to staff which are summarized with the letter.

Chair Nitafan is concerned that the South Calaveras station is not funded. He felt that 12 miles was too long from Warm Springs to the Montague/Capitol station.

Mr. Lindsay replied that VTA agreed to study the future Calaveras optional station and that VTA recognizes how important the station location is to the City of Milpitas and has included it in the studies including the EIR. There hasn't been funding identified yet for this station and that is why it is considered a future station. By including it in the environmental document then supplemental work is not needed after the fact, but at this time funding is still being investigated.

Chair Nitafan was in favor of supporting the Calaveras station over the Montague/Capitol station.

Mr. Lindsay stated that the Montague station is a critical station for a variety reasons. It is the first inter model station within the county, the first time BART touches light rail and it has enough land mass around it to facilitate the type of activities which would really strengthen the inter-model uses such as the buses, the pedestrians, the bicycles, the automobiles, the light rail, and BART all coming together. That station made it into every minimum operating segment (MOS) that the FTA (Federal Transit Authority) asked VTA to look at which shows how important that station is to the alignment. As an alternative, staff wouldn't support the Calaveras station over the Montague station, but would support it in addition to the Montague station.

Chair Nitafan requested clarification on the alternatives. Mr. Carrington explained that there is a no action alternative, which is the 2000 improvements, plus improvements that are already programmed and paid for through 2025 including the construction of Warm Springs and some bus lines. The other is the baseline alternative that is the no project alternative plus some extensions of bus way service.

Chair Nitafan felt that the City should not spend any money on BART alternatives because people voted for BART only. He was concerned that all of these other alternatives cost money and that BART should pay for it.

Mr. Carrington noted that federal and state law requires that the VTA complete an alternatives analysis in order to have an adequate EIR and if VTA were not to undertake a base line alternative, it would probably be in violation of state and federal law.

Vice Chair Lalwani asked for clarification on the VTA process and recalled that VTA has been holding meetings, and then letters were sent out to households, and then Milpitas residents give input. She asked how could residents respond to the City. Mr. Carrington noted that residents could respond to Tom Fitzwater of VTA, so during the 60 day public review period between March 16th and May 14th members of the public are urged to respond. At all of the various BART presentations that have taken place over several months, copies of the CD ROM were made available to whoever attended so that someone could read the document off the CD ROM. He explained that VTA couldn't print hundreds of the large printed document.

Vice Chair Lalwani asked what will happen when the City responds to VTA. Mr. Carrington responded that the process is there is a draft environmental document, it goes out for public review. The public review period closes, letters that have been sent in before the end date will then be analyzed and responded to in

what are called responses to comments. VTA would include a photocopy of every letter dividing it up into comments, and then number them, and respond specifically to each one of those individual comments from the beginning to the end of each of the letters that is provided.

Vice Chair Lalwani commented that she is being pessimistic that even though notices were sent to households, she is curious to know how many people responded and has a feeling that most people don't even know what is happening and only when it is finalized, there will be a barrage of questions about what's happening and why was the public not informed. She doesn't know what the solution is but it's just her natural feeling. She has talked to people and they are not aware of what is happening, and all the decisions are being made and the deadline is May 14th.

Mr. Lindsay commented that the notice that was sent out to all Milpitas residents, the City included its own hotline number and received approximately 19 messages on that hotline number in addition to a numerous inquiries on the internet and that is currently being tallied as well, so 19 messages is not a lot out of a population of 65,000 but staff did make the effort. There were two notices sent out and the community came out and attended the meetings and responded via internet and the telephone.

Vice Chair Lalwani noted that the reaction she got from people at Weller school is that it seems such a distant future and people are not even thinking about it and the feeling is that it is not going to happen because it is too far in the future.

Chair Nitafan opened the public hearing.

Kay Patel, 279 Balboa Way, felt unfortunate that he lives in the Dixon Landing area, and felt that the reports are not reflecting the current reality of what is happening. Trains pass near Dixon and are only going 5 to 10 miles an hour and he can hear lots of noise. The current noise level is being reported at 56 db, and the expected level is 62 db. He cannot imagine that BART is going back and forth every six minutes and that the noise level is only going to be increased by 6 db. He wants to know what are the mitigation factors that will be implemented to reduce the level. He is also concerned and disagrees with the aerial station and is disappointed that it might come to the City of Milpitas.

Mr. Patel is also concerned with the sound wall concern and noted that the report points out that if there is a sound wall, it will not be brought all the way on the south side of Milpitas, and he hopes that that consideration is being in place. He noted that someone could obviously see on the superimposed picture that BART doesn't want to show the hills and they took the picture from the other side. He hopes that the third option which is the retained cut is chosen, even if it is more expensive and felt that it wasn't fair that BART wants to go at the lowest cost at the cost of the citizens that are living there, and there are a lot of houses on the Milpitas on the railroad tracks there and is also disappointed that there were not a lot of responses from citizens. He would like to know that if there is a matter, how do you know how many residents responded. He is also concerned about the property values of the houses around the neighborhood.

Monte Britton, 1515 N. Milpitas Blvd., commented that he went to the VTA meeting last week and is disappointed that VTA wants to build the aerial structure because it is the cheapest and the quickest way without any regard to the residents. He is concerned because there is a lot of senior housing on North Milpitas Blvd., plus the City has spent a lot of money on existing sound walls behind Mobile Lodge and Pioneer Park. He felt that the aerial structure would ruin the whole feel of the area and would look like a Disneyland monorail up in the sky. He felt that the City has a chance to use money wisely that's already in place with the existing sound walls and prefers to go underground or the at grade cut. Both of these options would be much better for the north part of town as far as the looks and the feel and the quality of life in Milpitas won't look like some metropolitan downtown New York city.

Rob Means, 1421 Yellowstone, felt that there is a credibility problem with VTA's fiscal estimates and felt that VTA is doing an average number with decibels levels and still haven't come up with an explanation on how they expect to get a 71% fairbox recovery and felt that they have not done good research. Ultimately, he thinks the BART dream is over, and that it is time to say so and some of the other Cities seem to be starting in that direction. He hasn't seen any movement as part of Milpitas and felt that the Commission has an opportunity to recommend denial to Council for the EIS.

Frank De Schmidt, Economic Development Commission, asked if the projected cost at Dixon Landing crossing is the true cost. He felt that the research hasn't been done to figured out the entire cost and there could be more millions of dollars added through the years. He noted that the residents leaving near San Jose airport need additional sound walls and sound proofing windows.

Motion to close the public hearing.

Close the Public Hearing

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Giordano asked staff why they are not recommending the retain cut which seems would lessen the impact to residents.

Mr. McNeely explained that staff is interested in what the community's comments are because staff really needs further analysis to decide between the retain cut and the at grade option. With the scarcity of information thus far submitted, it appears that the advantages of the at grade option are preferable, and that is staff's recommendation so far.

Mr. McNeely noted that it is ultimately going to be the Councils' decision and the advantages of the retain cut is bringing BART lower, and out of that option, the City will not get the grade separation of the railroad, which is why staff felt it to be a significant advantage because a train has to blow its horn when it goes at an at grade crossing and would seem to be a tremendous advantage to the community.

Commissioner Giordano felt that the comment letter did not allow any latitude for the retain cut.

Mr. McNeely stated that on page 2, the letter states that further analysis is needed to thoroughly evaluate the two non-aerial options and there will have to be a decision made because they will have to come to grips with a preferred alternative.

Mr. Lindsay explained that there is a summary of bullet points on pages 1 and 2. Page 4 goes into each point in more detail and is a further elaboration that talks about the need for additional information, and given the information provided at this time, the at grade option is staff's choice, but clearly more information is needed.

Commissioner Giordano asked if the comments limit the options at this point or allows for another look at other possibilities.

Mr. McNeely noted that VTA is running the EIR parallel with the preliminary design, which is called the 35% design, so while staff is preparing these comments, VTA is making decisions that will affect everyone later this year and the 35% design will be completed in a year and a half. The bottom line is by the end of the year, these basic decisions will have to be made because that is when the final EIR will be published and certified. Also, the board of directors will be meeting in November and will have to approve a preferred option out of all of the options.

Commissioner Garcia commented that the City is at a decision point for some of these things, and felt that the letter is very genteel and suggested stronger wording that would say that the City demand more information. He felt that staff needs to make a firm requirement on VTA and BART otherwise the impacts are significant to the City.

Commissioner Garcia asked what are the possibilities of the MOS being in Milpitas because the project is in financial difficulty for a lot of reasons and it may come to Milpitas but not much further. It would seem to him, if this is the MOS forever, that the environment impacts in Milpitas would be more significant in the worst case scenario. He knows there are a lot of impacts around the Fremont BART station and also in the Dublin area, and asked what is the worst case if this is the MOS.

Mr. McNeely commented that there are many opinions about that and they would have to indicate that in the environmental document and it is not so indicated in this document, so the MOS in this document is eliminating some of those stations in San Jose, and that is the way it is being addressed. He can't say whether the document will be coming back and if it did, VTA would need another billion dollars to complete the document with federal money. Also, San Jose would want BART to extend to some portion in San Jose.

Vice Chair Lalwani asked if the reports could be revised or redone in 10 to 15 years.

Mr. Lindsay explained that there is a long time frame for the project and clearly conditions can change over a period of time. The VTA needs to have a completed environmental document for them to approve the final design of the BART alignment, and the design period will probably be a few years and the construction will take a longer time period. If there are changes to the environment which result additional significant impacts from the project, there will need to be a supplemental environmental document for the project for those conditions to be evaluated. He stated that California law allows for the fact that if something does change that wasn't analyzed, it can definitely come back for additional review and mitigation measures considered. That usually requires a substantial change in existing conditions and considering a 15 to 20 year timeframe, and the advancement of transportation planning and modeling, he can't really foresee anything of the magnitude that would require a recirculation of the document. The City of Milpitas experienced the recirculation of an older environmental document when the Milpitas Business Park was first developed, west of I-880, where Cisco is now, the original EIR for that business park was quite outdated because traffic conditions changed considerably and staff redid the EIR.

Vice Chair Lalwani asked if Mr. Lindsay recalls the duration of time from the inception to completion and Mr. Lindsay explained that the Milpitas Business Park wasn't completed and a lot of land was vacant and what changed was the environment around it and the amount of traffic going through Milpitas. At the time the EIR was done, staff did not expect the rapid growth in the north San Jose area and the Milpitas area.

Chair Nitafan agrees with Commission Garcia that the comment letter is too humble, and suggested that stronger and more demanding words are needed such as demanding the need for the South Calaveras station in Milpitas. He noted that the Commission, Council, and the public support the Calaveras station. He also felt that more publicity is needed, especially since the project is 35% completed. Staff needs to inform the public more and reach out more, just like the City did at the intersection of Calaveras and R-237, and even won a state award for publicity of that project because the public was informed and he felt that the public really approved the project.

Chair Nitafan suggested on page 1, change the sentence that states, "Milpitas fully supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds." to "Milpitas strongly supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds."

Commissioner Giordano suggested on page 2, under Dixon Landing Road options, strike out the sentence that reads, "Further analysis is needed to thoroughly evaluate the two non-aerial options" and suggest to insert the wording, "Without further analysis and input, the City cannot fully evaluate the two non aerial options, and reserves the right to support either option when said analysis is provided".

Motion to recommend that the City Council approve the Draft comment letter on the DEIS/DEIR with the following two changes:

1. Page 1 – Change the sentence that reads,

“Milpitas fully supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds.”

to

“Milpitas strongly supports the development and operation of a second station located at the southwest quadrant of Calaveras and Milpitas Blvds.”

2. Page 2- Strike out the sentence that reads,

“Further analysis is needed to thoroughly evaluate the two non-aerial options”

and replace with

“Without further analysis and input, the City cannot fully evaluate the two non aerial options, and reserves the right to support either option when said analysis is provided”.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:36 p.m. to the next regular meeting of May 12, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

May 12, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Lindsay and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
April 28, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of April 28, 2004.

Commissioner Garcia changed the sentence on page 12 that reads,

“Commissioner Garcia commented that the City is at a decision point for some of these things, and felt that the letter is very gentle and suggested stronger wording that would say that the City demand more information.”

to

“Commissioner Garcia commented that the City is at a decision point for some of these things, and felt that the letter is very genteel and suggested stronger wording that would say that the City demand more information.”

Chair Nitafan changed the sentence on page 8 that reads,

“Chair Nitafan complained that the Commission normally is provided the EIR document and this time, did not receive it.”

to

“Chair Nitafan pointed out that the Commission normally is provided the EIR document and this time, did not receive it.”

Chair Nitafan also changed the sentence on page 9 that reads,

“Chair Nitafan felt that the City should not spend any money on BART because people voted for BART.”

to

Chair Nitafan felt that the City should not spend any money on BART alternatives because people voted for BART only

Motion to approve the minutes.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Planning Manager, announced that the City Attorney will provide a general overview of religious land use issues (RLUIPA) at the May 26th meeting as requested by the Commission.

Commissioner Garcia thanked staff for doing a great job on the appeal process for the Town Center/Safeway project and noted that staff did a good job of presentation to the City and established the process for public comment from the people that were appealing, as well as the respondents and for the public as well.

He also thanked Wiley and Deborah Rankin who filed the appeal and noted that they did a great job representing the public and starting a discussion that was appropriate for the City and felt that the City and the project is stronger as a result of the process.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item No. 1**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that staff would like to add Item No. 1 (Use Permit Amendment No. UA2004-5 and "S" Zone Approval Amendment No. SA2004-33) to the consent calendar. Staff is recommending approval of the item with eight conditions and the applicant is in full agreement with the recommendations and the conditions of approval.

The Commission agreed to add Item No. 1 to the consent calendar.

Chair Nitafan opened the public hearing on Consent Item No. 1.

There were no speakers from the audience.

**Close the public hearing on
Consent Item No. 1**

Motion to close the public hearing on Consent Item No. 1.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item No. 1.

***1 USE PERMIT AMENDMENT NO. UA2004-5 AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-33:** Request for a new 25-foot tall freestanding sign to replace an existing 20-foot tall monument sign for the Shell Gas Station located at 950 East Calaveras Boulevard (APN: 086-29-027), zoned Highway Service. Applicant: Arc, Inc. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2366) *(Recommendation: Approval with Conditions)*

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

**VIII.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:06 p.m. to the next regular meeting of May 26, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

May 26, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Bakker, Carrington, Fujimoto, Heyden, Lindsay, Pereira and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
May 12, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of May 12, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Planning Manager, announced that the City Attorney's presentation of religious land use issues (RLUIPA) would be continued to the June 9, 2004 meeting.

Chair Nitafan announced that the annual Filipino multicultural festival and event show would be held on June 5, 2004 from 7 p.m. to midnight.

Mr. Lindsay also announced that the Commissioners appreciation dinner will be held at the City Hall Civic Center Plaza on July 23, 2004 at 6:30 p.m. and will include a barbeque buffet dinner with live entertainment.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Commissioner Giordano asked staff what the outcome was in regards to the design of the entry gate at 1000 Country Club Drive relative to the other two entrances.

Troy Fujimoto, Associate Planner, noted that the other two entrances are similar, however there is another entrance that is adjacent to the existing property that has a new gate with a different design.

Chair Nitafan opened the public hearing on Consent Item Nos. 3 and 4.

There were no speakers from the audience.

**Close the public hearing on
Consent Item Nos. 3 and 4**

Motion to close the public hearing on Consent Item Nos. 3 and 4.

M/S: Galang/Sandhu

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3 and 4.

***3 USE PERMIT AMENDMENT NO. UA2004-6:** A request to amend an existing use permit to allow outdoor cooking (barbecue) and add a deli service to an existing market at 74 Dempsey Road (APN: 088-04-001), zoned Neighborhood Commercial with an "S" overlay (C1-S). Applicant: Al-Khafaji Hassan. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2321) *(Recommendation: Approval with Conditions)*

***4 PLANNED UNIT DEVELOPMENT (PD2002-2) AND TIME EXTENSION (TE2004-2):** A request for a one-time 18-month time extension for Planned Unit Development No. PD2002-2 for a hillside single-family home at 1000 Country Club Drive. (APN: 029-03-014), zoned Single Family Hillside (R1-H). Applicant: LaCroix Construction Co. Inc. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Recommend Approval to City Council with Conditions)*

M/S: Mohsin/Lalwani

AYES: 7

NOES: 0

**VIII.
PUBLIC HEARING**

1. "S" Zone

**Approval Amendment No.
SA2004-7 and Use**

Permit Amendment No.

UA2004-2: A request to amend a previously approved mixed-use development at 230 North Main Street.

Applicant: Apton Properties, LLC.

Mr. Lindsay noted that the agenda title should read "S" Zone approval Amendment No. SA2004-7 and Use permit Amendment No. UA2004-2. He also noted that right before the start of the meeting, staff received another letter from the applicant and they are suggesting rewording of Condition No. 34(a) which is referenced in their previous letter. He noted that it is a lengthy change, and staff would need more time than is allowed in the meeting to consider the change, so staff will continue to work with the applicant on the item through the next City Council meeting.

Staci Pereira, Assistant Planner, presented "S" Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2, a request to amend a previously approved mixed-use development to reduce the number of residential units from 102 to 96, reduce the retail floor area, modify their Density Bonus approval to exceed the maximum density by 7 units and a request not to provide 27 required parking spaces. The project site is located at 230 North Main Street within the MXD-TOD zoning district and Ms. Pereira recommended approval with conditions to City Council. In addition, staff recommends revisions to Condition No. 34(a), and deletion of Condition Nos. 46 (Utilities) and 51 (Vibration Study) which reads as follows:

34) PUBLIC IMPROVEMENTS. Prior to any building permit issuance, the developer shall:

- a) Make a payment to the City in Lieu of designing and constructing the required improvements along its frontage on Weller Lane (construct 30 foot maximum width street) and intersection improvements at N. Main and Weller, including but not limited to curb and gutter, pavement, decorative lighted smart crosswalk, sidewalk, relocating underground utilities (water, sewer, and storm drain line) and providing utility laterals, Fire hydrant and fire service connections to serve this project, decorative curb bulb-out at intersection with flush curb & protective bollards, street tree planting, signage and striping, signal modification, street lights, pedestrian lighting and tree well grates, except undergrounding/relocating of the existing overhead utilities. The developer's obligation for payment in Lieu of designing and constructing the required improvements is set at a maximum of \$652,856. The City will consider adjusting this amount based on the average of three cost estimates from bonded licensed contractors from the same scope of work provided by applicant that meets the approval of the City Engineer. The developer is also required to coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E.

46) UTILITIES. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

51) VIBRATION STUDY. Prior to building permit issuance, the applicant shall submit to the Planning Division a site specific vibration analysis addressing the vibration impacts from the adjacent Union Pacific Railroad tracks from a qualified acoustical consultant. If at the time of final design there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating.

Commissioner Sandhu asked if the application for amending the project was initiated by the City or the applicant. Ms. Pereira replied that the revisions were initiated by the applicant and were in part due to the progress of the library project.

Commissioner Giordano asked what were the reasons behind the reduction of 27 parking spaces. Ms. Pereira noted that the previous approved project had two levels of parking that exceeded the building height and number of stories in the district. The project was resubmitted with modifications that included only one level of parking, a reduction of height, reduction in stories, and reduction in units as well as the retail floor area, so the total number of parking spaces has been decreased. 25 spaces of guest parking and 2 retail spaces is requested to be reduced.

Commissioner Giordano is concerned about the reduction in parking and asked if the City has experienced something like this before in Midtown. Mr. Lindsay commented that this is something new and staff is hoping to create the environment in Midtown for more parking opportunities. He noted that the Council approved the hiring of a consultant to help the City look at creating more parking districts in Midtown so that a developer is not required to provide all of their parking on the property which would maximize their value in property and get people out of their cars to walk on the streets looking at storefronts.

Commissioner Garcia asked what is status of the union pacific railroad tracks. Mr. Lindsay replied that the rail tracks are currently not in use and once the BART alignment is complete the operations will be moved to those tracks. The tracks are not expected to be in use until after Apton Plaza gets built. He also noted that Caltrans has provided a worse case scenario vibration analysis, which has been applied to the project, and even though existing vibration conditions cannot be measured, staff felt assured that if train traffic were to resume on the tracks, everything would be fine.

Commissioner Garcia asked what is the distance from the future BART to Apton plaza and Mr. Lindsay replied that the BART tracks are several hundred feet away.

Commissioner Garcia asked if the noise from the rail yard would impact the future residents of Apton Plaza. Ms. Pereira explained that a noise analysis done by a consultant concluded that the internal noise levels could be achieved so long as during construction of the project proper doors, walls and windows are installed with specific ratings. Also, it was concluded that exterior noise levels would not be exceeded in the courtyard due to the three story residential height of the building.

Commissioner Galang asked where would the garage entrance be relocated. Ms. Pereira responded that the garage entrance would be relocated to N. Main.

Commissioner Galang asked why is the garbage enclosure being relocated. Ms. Pereira responded that the Weller driveway is intended to be a driveway to the new garage in the future. It would also be difficult for BFI to access the project's garbage enclosure.

Mr. Lindsay added that the turnaround space near the garbage enclosure made it no longer feasible for the fire department and BFI to access the area.

Commissioner Galang inquired about the proposed towers of the building and Ms. Pereira showed a drawing exhibit and explained that the towers anchor three of the four corners and vary in height.

Commissioner Galang inquired about the proposed clock. Ms. Pereira noted that the clock will be visible by the public and the details of the clock will have to be approved by staff at the time of permit issuance.

Vice Chair Lalwani felt comfortable about on-street parking noting that once the VTA bus station on N. Main goes away there will be plenty of parking spaces. She asked if the three-story parking garage near the library will be for pedestrians and residents of the development and Ms. Pereira responded, "Yes." She also explained that in conjunction with the library construction, there would be a public garage facility, which will be available to all members of the public including guests and patrons of the proposed retail development.

Vice Chair Lalwani asked for clarification on the memos received by the applicant and the City and asked if condition no. 34(a) could be worked out. Ms. Pereira responded that staff hasn't had a chance to review the revised letter submitted by the applicant but should have an answer before the Council meeting in June.

Mr. Lindsay added that staff is asking that the Commission make a recommendation to the Council including to include the revisions to special condition no. 34(a) proposed by staff. If there are any additional changes, staff will make the changes prior to the Council meeting.

Commissioner Mohsin asked staff what "below grade" meant in regards to the trash enclosure. Ms. Pereira responded that it means the enclosure will be built like an inverted driveway, about a 2% slope.

Commissioner Mohsin asked if the slope will be comfortable for residents and Ms. Pereira responded that the garbage enclosure will be aesthetically pleasing and will not produce any odors or noise.

Commissioner Mohsin asked about any vibration noise in regards to the nearby railroad tracks. Ms. Pereira responded that staff is recommending that condition no. 51 be removed because the applicant has submitted a vibration study by a consultant that uses a standard that looks at the worst case scenario so based on that, staff would not anticipate that any vibration would be worse than that.

Chair Nitafan acknowledged staff for completing a vibration study and noted that it is up to the Commission to delete condition no. 51.

Chair Nitafan introduced the applicant.

Jim McClelland, Maple Dell + McClelland Architects in Walnut Creek, noted that that the applicant is very supportive of the staff report except for condition no. 34(a). The applicant felt that the estimate compiled by the City is very preliminary and would like to study it in a lot detail and provide estimates by other contractors before agreeing to a dollar number. He also noted that staff said that they could present the cost estimates to Council. In that regard, the applicant accepts the revised wording of condition no. 34(a) and will present the revised language to Council.

Commissioner Giordano asked Mr. McClelland if he accepts staff's version of condition no. 34(a) and Mr. McClelland responded, "Yes", as long as the applicant can present some cost estimates at the Council meeting.

Commissioner Giordano asked if the applicant is to give cost estimates lower than what the City has provided, will there be a problem with the City accepting the bid. Mr. Lindsay explained that the estimates and any revised amounts need the approval of the City Engineer. The bids will have to be structured as if the City is doing the work because this will be an in-lieu fee that the developer pays the City with the intention the City uses the money to put towards those improvements in place to stage that with the construction of the library. If the bid the developers receive has been done appropriately than the City Engineer will adjust the fee.

Chair Nitafan opened the public hearing.

Don Peoples, 529 S. Main Street, President of Downtown Association, commented that each area in Midtown has unique challenges. For example, the southern portion of Main Street has a large lot and the City owns the biggest lot on the north end. He felt that it is important that staff does their best to get the project underway and felt that the project will greatly enhance the library project and the look of the area.

**Close Public Hearing
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Motion to approve "S" Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2 with revised Condition no. 34(a) and deletion of condition no. 46 and condition no. 51.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Chair Nitafan felt that the changes to Apton Plaza are very positive and will accommodate the new library.

Commissioner Mohsin is very excited about the project and is looking forward to the completion of the project.

2. SIX-MONTH REVIEW (PR2004-2) OF USE PERMIT AMENDMENT NO. UA2003-15: A six-month review of Use Permit Amendment No. UA2003-15 for the Manila Natori restaurant at 579 South Main Street. *Applicant: Bella Juniega*

Troy Fujimoto, Associate Planner, presented a Six-Month Review (PR2004-2) of Use Permit Amendment No. UA2003-15 for live entertainment, to ensure that a garbage enclosure is built and the project is in compliance with all conditions of approval for the Manila Natori restaurant at 579 South Main Street and recommended note receipt and file.

Chair Nitafan invited the applicant to speak.

Don Peoples, 529 S. Main Street, consultant to Manila Natori, stated that the improvements to the outside of the restaurant is fantastic and noted that the applicant has done a lot of work to clean up the outside. He noted that the design of the trash enclosure has been submitted to the City and is expecting to get City approval with the plans. As far as the occupancy permit, a couple of conditions need to be cleared up.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing
Agenda Item No. 2**

Motion to close the public hearing.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

Chair Nitafan asked if the new tenants were aware of the conditions that the previous owner did not meet. He also asked how long has the new tenant been operating at Manila Natori. Mr. Fujimoto noted that when the previous temporary use permit expired in July 2003, the new owners had taken over the business and it was their request to not have the improvements done prior to having live entertainment. Staff accommodated their request and gave them six months so that they can still have their live entertainment.

Bella Juniega, Applicant of 579 S. Main Street, stated that they have been given a hard time because of the previous owners and said that they would comply with the City the best they could. She knows that they are late on the trash enclosure because they had just started the business, so she asked staff to give them some time which they did, at the same time we did it as fast as we could. She noted that the restaurant looks much better than before and felt that staff should consider giving them more time to complete the enclosure.

Chair Nitafan asked the applicant if she agrees to one month to complete the trash enclosure. Ms. Juniega responded that she doesn't know how long it will take to complete the enclosure.

Chair Nitafan asked staff if one month is reasonable. Mr. Fujimoto replied that it is staff's understanding that the plans are almost complete in regards to the trash enclosure. Once the permit is procured it should take two weeks to complete construction so four weeks should be adequate time.

Mr. Lindsay added that if improvements are not completed staff will be agendaizing the item as a public hearing and the applicant will have an additional opportunity for public testimony.

Chair Nitafan asked the City attorney for his opinion.

John Baaker, City Attorney, noted that the use permit gives the tenants the right to provide live entertainment and the use permits run with the land, so the new tenants have to step into the authority that the previous tenants had, they become subjects to the conditions of approval. He doesn't think the fact that a new tenant arrived makes any difference.

Chair Nitafan noted that the Commission requires no action because the recommended action is note receipt and file.

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:04 p.m. to the next regular meeting of June 9, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 9, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Vice Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: Nitafan
Staff: Carrington and Lindsay

**III.
PUBLIC FORUM**

Vice Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
May 26, 2004**

Vice Chair Lalwani called for approval of the minutes of the Planning Commission meeting of May 26, 2004.

There were no changes from staff.

Motion to approve the minutes as submitted.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Commissioner Giordano congratulated Commissioner Garcia for being recognized at the June 2nd CAC meeting for being Chair of the CAC. She also attended the June 1st transportation community forum led by Carl Guardino from the Silicon Valley Manufacturing Group, which was also attended by Supervisor Pete McHugh.

She also asked staff if the Jacklin Road streetlights have the same synchronized lighting as the streetlights on Calaveras Boulevard. She is concerned that Jacklin Road is becoming congested and would like staff to follow up. **James Lindsay, Planning Manager**, noted that he would follow up with the traffic division and get back to Commissioner Giordano.

**VI.
APPROVAL OF
AGENDA**

Vice Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 1 and 2**

Vice Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay requested that Item No. 1 be removed from the consent calendar because a concerned resident would like to address the Commission on the project. The Commission agreed to remove Item No. 1 from the consent calendar.

Vice Chair Lalwani opened the public hearing on Consent Item No. 2.

There were no speakers from the audience.

**Continue Consent Item No.
2 to June 23, 2004**

Motion to continue Item No. 2 to the June 23, 2004 meeting.

***2 USE PERMIT NO. UP2004-11:** A request to locate telecommunications antennas atop of an existing 95 foot tall light pole and accompanying equipment inside an enclosure at Milpitas High School at 1285 Escuela Parkway, in the R1-6 Zoning District (APN: 026-18-003). Applicant: Jennifer Estes. Project Planner: Troy Fujimoto, (408) 586-3287. (*Recommendation: Continue to June 23, 2004*)

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VIII.
PUBLIC HEARING**

1. USE PERMIT NO. UP2004-9: A request to locate telecommunications antennas inside a 40-foot tall flagpole and accompanying equipment inside an enclosure at Rancho Milpitas Middle School at 1915 Yellowstone Avenue in the R1-6 Zoning District. Applicant: *Cingular Wireless.*

Dennis Carrington, Senior Planner, presented Use Permit No. UP2004-9, a request to locate telecommunications antennas inside a 40-foot tall flagpole and accompanying equipment inside an enclosure at Rancho Milpitas Middle School at 1915 Yellowstone Avenue in the R1-6 Zoning District. Mr. Carrington recommend approval with conditions based on the findings and recommendations noted in the staff report.

Mr. Lindsay noted that Commissioner Giordano left the Council Chambers at 7:06 p.m. due to living within 300 feet of the project site.

Vice Chair Lalwani opened the public hearing.

Andy Miner, Applicant, agrees with the findings and conditions proposed by staff and is available for questions from the Commission and concerned residents.

Ronald Chang, 1596 Sonoma Drive, is concerned that the telecommunications equipment emits electromagnetic waves that will cause cancer and felt that the flagpole will diminish his property value.

Paul Lu, 1726 Tahoe drive, apologized for missing the first part of the meeting and asked what is the purpose for the telecommunication flagpole and how will it be operated.

Mr. Carrington explained that the antennas will provide signals for Cingular Wireless cell phones in the area and will be disguised as a flagpole located at Rancho Middle School.

Mr. Lu asked why the Rancho middle school site was chosen. Mr. Carrington explained that there is low signal density in the area so cell phone calls were being dropped and that is why Cingular needed to locate more antennas.

Mr. Lu asked if there is research about health effects and if the findings are available to the public. Mr. Lindsay informed him that Mr. Carrington already presented the information earlier and the applicant could answer additional questions.

Mr. Lu is concerned that the antenna is a health risk and felt that more parents should have been notified.

Mr. Miner noted that a health study was prepared and the project meets federal standards. He explained that the flagpole antenna is forty feet away and will not do harm to people standing below. He noted that the flagpole was chosen purposely because it is set well back from the street and is not close to the nearby residences and the location was also chosen to provide coverage for the people in the area.

**Close Public Hearing
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Galang/Sandhu

AYES: 5

NOES: 0

Commissioner Galang asked for clarification on the ground equipment. Mr. Miner explained that the ground equipment takes the signal from the antennas and sends it through the phone lines.

Commissioner Galang asked if the equipment emits radiation. Mr. Miner replied that it does not emit radiation. It is similar to a computer because the equipment is enclosed and is in an airtight box.

Commissioner Galang asked how many Cingular antennas are in Milpitas and Mr. Miner replied, "three".

Commissioner Galang asked if Cingular has a report that says the antennas are safe and Mr. Miner said that the report is included in the Commissioner's packet.

Commissioner Mohsin asked if there are any other schools that have antennas located on their buildings and Mr. Miner replied, "Yes".

Commissioner Mohsin asked if the public was notified about the project and Mr. Lindsay replied that the neighborhood received public hearing notices and Mr. Fujimoto received calls from concerned residents and gave them the information.

Mr. Chang stated that in the last year the City of Los Gatos rejected a similar type of project and felt the City of Milpitas should do the same.

Motion to approve Use Permit No. UP2004-9 based on the findings and conditions noted in the staff report.

M/S: Garcia/Sandhu

AYES: 5

NOES: 0

IX.

NEW BUSINESS

Commissioner Giordano returned to the Council Chambers at 7:27 p.m.

2. DISCUSSION ITEM:

Informational discussion of the Religious Land Use and Institutionalized Persons Act (RLUIPA). *Staff Contact:* James Lindsay, (408) 586-3274.

Mr. Lindsay noted that due to Chair Nitafan's absence, he asked that this discussion be continued to the June 23rd meeting so the Chair could participate, so no action is necessary from the Commission.

X.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:28 p.m. to the next regular meeting of June 23, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 23, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitaфан called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitaфан, Lalwani, Galang, Garcia, Mohsin and Sandhu
Absent: Giordano
Staff: Carrington, Fujimoto, Heyden and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitaфан invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
June 9, 2004**

Chair Nitaфан called for approval of the minutes of the Planning Commission meeting of June 9, 2004.

Tambri Heyden, Planning and Neighborhood Services Director, noted that she and Troy Fujimoto's names should be removed from Roll Call since they were not present at the meeting.

Motion to approve the minutes with the changes.

M/S: Lalwani/Sandhu

AYES: 5

NOES: 0

ABSTENTIONS: 1 (Nitaфан) – Absent at the June 9, 2004 meeting.

**V.
ANNOUNCEMENTS**

Ms. Heyden announced that staff is collecting photo ideas for the 2005 City calendar and would need them by July 19, 2004. She also noted that the subcommittee rotation schedule has changed, and the new commissioners for the next three months are Commissioner Galang and Vice Chair Lalwani and alternate member Chair Nitaфан. She also informed that the Commission would need to RSVP for the commissioner's annual recognition dinner by July 9, 2004.

Ms. Heyden noted that there is an article in which the City of Milpitas was profiled for Cisco technology in Cisco's small business magazine and passed it out to the Commission and also noted that the Commissioner's received information in their packet for a free online land use planning fundamentals course being sponsored by the Lincoln Institute of Land Policy. It is a pilot project and they need five volunteers from the state.

Vice Chair Lalwani noted that she would attend the Commissioner's recognition dinner.

Commissioner Mohsin thanked staff for providing the Cisco IQ magazine and thought it was great that the City of Milpitas was profiled. She also noted that she attended the affordable housing tour on June 11, 2004, which gave her great ideas about various projects in different cities.

Commissioner Garcia noted that he would be on a business trip and will not attend the July 14, 2004 Commission meeting.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 2 and 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item No. 2.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item No. 2.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2 and 3.

***2 USE PERMIT NO. UP2004-11:** *(Continued from June 9, 2004)* A request to locate telecommunications antennas atop of an existing 95 foot tall light pole and accompanying equipment inside an enclosure at Milpitas High School at 1285 Escuela Parkway, in the R1-6 Zoning District (APN: 026-18-003). Applicant: Jennifer Estes. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

***3 'S' ZONE APPROVAL AMENDMENT NO. (SA2004-50) – SIGN PROGRAM:** A request for a sign program for Shapell office building and two retail buildings at the front of the property at 60, 100 and 120 North Milpitas Boulevard (APNs: 028-12-020 & 021), zoned Town Center district (TC). Applicant: Shapell Industries. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

M/S: Lalwani/Galang

AYES: 6

NOES: 0

VIII. PUBLIC HEARING

REVOCATION OF USE PERMIT AMENDMENT NO. UA2003-15 (AD2004-

8): A request to revoke Use Permit Amendment No. UA2003-15 for live entertainment, including dancing and karaoke, at the Manila Natori restaurant at 579 South Main Street.
Applicant: City of Milpitas

Troy Fujimoto, Associate Planner, presented a request to revoke Use Permit Amendment No. UA2003-15 (AD2004-8) for live entertainment, including dancing and karaoke, at the Manila Natori restaurant at 579 South Main Street (APN: 086-11-012), zoned Mixed Use (MXD), and recommended revocation of the Use Permit to City Council.

Vice Chair Lalwani asked if the applicant needs two certificates of occupancy for the restaurant and for live entertainment. Mr. Fujimoto replied that the applicant has only one certificate of occupancy and anytime live entertainment is added, the applicant has to apply for a new certificate so staff can verify that they have satisfied the conditions of approval.

Commissioner Garcia asked what is the status on the trash enclosure and how long will it take for the applicant to get a building permit. Mr. Fujimoto replied that the building permit has been issued and the applicant is working on the trash enclosure.

Commissioner Garcia asked when the building permit expires and Mr. Fujimoto responded, "six months".

Chair Nitafan invited the applicant to speak.

Marie Asistin, Applicant of 579 S. Main Street, noted that work has been started on the trash enclosure and the contractor is trying to finish by next week.

Chair Nitafan opened the public hearing.

Mr. Don Ryan, Vice President of Milpitas Chamber of Commerce, noted that when Marie joined the Chamber of Commerce she was scared of working with the City, but over time she has worked hard on making her business look beautiful. He thinks the City could count on Marie to complete the project in time.

Frank De Schmidt, Chamber of Commerce, asked if it is possible for the Commission to continue this item while giving the applicant more time to finish up the project and at the same time go forward with the revocation process.

Seton Chow, Owner of Manila Natori, noted that the reason the project has been delayed is because of money problems. He recalled that when he first submitted the drawings for the garbage enclosure to the City, there were problems with the water and sewer line and the City wanted him to fix these problems. He felt that the City was giving him and the previous owner a hard time and that is why the previous owner left the business.

**Close Public Hearing
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

Commissioner Garcia agreed to continue the item for 30 days to see if the enclosure is completed and would like to put a condition that the project automatically goes to Council for revocation if the enclosure is not built. He felt that the City has bent over backwards for the applicant and 30 days will not make a big difference, however, he is against losing the live entertainment aspect of the business. He urges the Commission to hold off on revoking the Use Permit and any penalties that are involved.

Chair Nitafofan asked if the public hearing would be open if the item is continued. Ms. Heyden understood the motion as to continue the public hearing and if the applicant has not complied, then the recommendation would be to go to City council for revocation.

Chair Nitafofan suggested that the item be continued to the July 28, 2004 meeting.

Ms. Heyden noted that the applicant was cited through the code enforcement process because of the trash enclosure and received the standard notice to abate and was given 30 days to comply, which they did not comply with within this timeframe and therefore they were subject to a fine, and to her knowledge that fine has not been paid. Therefore, the use needs to cease regardless to what is being done, so even though the Commission is continuing the item, the use needs to cease. She also explained that the fine is per citation notice, so since the applicant has not complied, staff will issue another notice of violation, and if they don't comply within that period the fine escalates to two hundred dollars.

Vice Chair Lalwani asked if the applicant could still operate the business if they pay the fine. Ms. Heyden responded that the purpose of the citation process is to gain compliance, so merely paying the fine doesn't gain compliance it just puts you into this treadmill of not reaching the end goal. So even if the applicant pays a fine so it is more than paying the fine, it's also paying the fines that are due from past of lack of activity.

Vice Chair Lalwani asked if the Commission gives them a 30-day extension, can they continue the live entertainment and Ms. Heyden explained that they are still not in compliance and would have to cease operation. Until they comply, they can reinstate their entertainment use.

Ms. Asistin noted that they have two parties planned the upcoming weekend and asked if they have to be canceled. She also noted that she was unaware of the two hundred dollar fine.

Mr. Fujimoto noted that the citation was sent to the restaurant at 579 Main Street; however, it was delivered to Ms. Asistin's niece.

Chair Nitafofan noted that that the applicant can continue the restaurant portion of the business, and said it is important for the applicant to comply with policy so that they are able to have live entertainment.

Kit Faubion, City Attorney, clarified that since the motion is to continue the public hearing for 30 days, the application should come back to the Commission at the continued hearing, so at that time, the Commission would hear testimony and move forward.

Commissioner Garcia asked if the term “live entertainment” includes karaoke and Ms. Heyden responded, “Yes”.

Commissioner Sandhu asked if there would be discussion when the item comes back and Ms. Faubion replied that when the public hearing is continued, the public hearing would be open and you would still have the opportunity to receive advice from staff, and depending upon the circumstance of the applicant and anybody that wants to speak about it. At the close of the public hearing, the commission would then take an action whichever action is appropriate.

Commissioner Garcia noted that there is no choice other than to go along with the notice of abatement, so even though other groups are supporting the applicant to extend the deadline for thirty days without any penalty further, it appears they are making good faith.

Ms. Heyden agreed with Commissioner Garcia and noted that as of June 15th, the applicant has a hundred dollar outstanding fine.

Commissioner Garcia asked if the applicant pays the hundred dollars, could they still continue with the live entertainment even though they are in violation. Ms. Heyden replied that the applicant’s use would be suspended until they comply.

Chair Nitafan noted that the Commission has to be consistent in case a similar situation arises in the future.

Commissioner Garcia commented that he enjoys an organization that puts forward a good faith effort, and felt that this applicant was doing just that. He noticed that the outside of the restaurant looks much better.

Chair Nitafan asked staff if there are other options. Ms. Heyden explained that the last option is to continue the public hearing and recommend to city council revocation or suspension or modification to their permits so when the Commission chooses to take up this issue at the next hearing, the Commission will be able to take the proper course of action. She also noted that in the last 12 months there have been many use permits which have been approved for live entertainment and it is a very popular request, and all of those use permits have had to comply with all of their conditions prior to the use being activated.

Mr. Chow still felt that the City was unfair in their process and said that he tried to comply with the City but they couldn’t agree on the trash enclosure.

Commissioner Galang is concerned that the applicant will be losing a majority of their business from removing the live entertainment.

Chair Nitafan commented that the Commission has compromised many things and cannot compromise anymore.

Motion to continue Use Permit Amendment No. UA2003-15 (AD2004-8) to the July 28, 2004 meeting.

M/S: Garcia/Sandhu

AYES: 6

NOES: 0

IX. NEW BUSINESS

2. DISCUSSION ITEM: Informational discussion of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Kit Faubion, City Attorney, presented a discussion on the Religious Land Use and Institutionalized Persons Act (RLUIPA). She noted that RLUIPA has a big effect on land use throughout the country and noted that a memo was handed out to the Commission providing the relevant portions of RLUIPA and recent case laws about RLUIPA.

Commissioner Garcia asked if there is any case law about a government having compelling reasons, such as health and safety, to have a religious use in a commercial and industrial area. Ms. Faubion noted that she is unaware of anything at this point and it is pretty clear that something like a building code would be a compelling interest so there wouldn't be too much difficulty for a religious use to occupy a building in an industrial area. On the other hand, if you want to condemn a piece of property so that it is to be economically beneficial such as a non profit organization, then it's pretty clear that it wouldn't be allowed, such as the Cottonwood case which was referenced in the Commissioner's packet.

Commissioner Garcia asked if there are any accepted standards for health and safety, on how far apart any assemblies could be from hazardous materials.

Ms. Faubion noted that she is unaware of standards like that, but there could be some and she would have to follow up with the Commission. She noted that hazardous materials in general are very highly regulated at all kinds of levels, and if you wish to have more information, you want to make sure that we cover the various levels, just as a general matter for this particular kind of use.

Commissioner Garcia noted that James Lindsay came up with the idea to map out areas where hazardous materials are in Milpitas, and the areas where the City might not want assemblies of any sort to be located and that would be a good indicator for the Commission to know where are appropriate areas for any assembly usage as opposed to industrial usage.

Commissioner Garcia noted that the Commission and applicants need guidance so that applicants don't go through the time and effort to find properties and find that it is not available. He felt that Mr. Lindsay's idea about drawing circles around hazardous zones where overlapping areas are might not be appropriate for assemblies, however he would like staff to follow up on this.

In regards to the case law study that was described in the memo, Vice Chair Lalwani asked if there was lack of full disclosure and Ms. Faubion noted that in the case study, San Jose Christian College asked for a large facility and then it turned out that more information was needed about the facility. When staff indicated that to them San Jose Christian College decided to back off from submitting the application, and at the same time, were visibly and actively advertising that they did not intend to have 400 students but 1600 students. Staff indicated that there were CEQA issues and that this had to be resolved before a permit was considered. The petition from San Jose Christian college was that they were being burdened by having to provide this additional information and provide a complete application and the court disagreed.

Vice Chair Lalwani said it would be a good idea for staff to flag the areas which cannot be zoned for assembly, because now with this high rate of vacancy, we are seeing office buildings being converted to other uses besides office, like two buildings on Montague court.

Chair Nitafan noted that when he was at the League of California Cities conference, they emphasized that staff would have to analyze an application for an assembly to enter an industrial area and felt that a process needs to be put in place to avoid future litigation. Chair Nitafan also suggested that he would like to see if the ordinance could touch up on this issue to avoid future litigation.

Ms. Faubion noted that staff would look at what other cities are doing in regards to RLUIPA and determine how to appropriately to implement this statute given different land use issues.

Chair Nitafan commented that hopefully the City would avoid any future litigation in regards to religious land use and thanked the City Attorney for all of the information.

There being no further business, the meeting was adjourned at 7:59 p.m. to the next regular meeting of July 14, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**X.
ADJOURNMENT**

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

July 28, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Garcia, Giordano, Mohsin and Sandhu
Absent: Galang
Staff: Carrington, Heyden and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
June 23, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of June 23, 2004.

Motion to approve the minutes.

M/S: Sandhu/Mohsin

AYES: 5

NOES: 0

ABSTENTIONS: 1 (Giordano) – Absent at the June 23, 2004 meeting.

**V.
ANNOUNCEMENTS**

Tambri Heyden, Acting Planning and Neighborhood Services Director, made note of the handout regarding agenda item No. 3, which is on consent. There is a slight change to the conditions of approval and the applicant has agreed to the change.

Ms. Heyden noted that there would be a save-the-date postcard coming in the mail about an Ethics Code training session scheduled for Commissioners on October 7, 2004, and an alternate date of October 20, 2004. The sessions will be held from 7:00 – 9:00 p.m. in the Community Center Auditorium.

Commissioner Garcia asked when the Ethics Code training would take place for political candidates. Ms. Heyden replied that the candidates' workshop is scheduled for August 18, 2004.

Commissioner Giordano noted that there are a couple of residents in the area of Mt. Shasta and Dempsey Road who are concerned about the speed of traffic going through that area, particularly along Mt. Shasta going on to Dempsey. Their thought was to look into having speed undulators for that area. Ms. Heyden stated that staff would look into this.

Commissioner Sandhu extended an invitation on behalf of the Sikh Foundation of Milpitas. He noted that everyone present and those listening at home are welcome to attend the Milpitas Cultural Night, which will be held on August 21, 2004, at the Milpitas Community Center. General admission is \$9.00 dollars and children are free.

Chair Nitafan stated that he wrote a letter to the City Council advising them of his resignation from the Planning Commission. He then read the letter about his twelve years of service and his appreciation for being appointed to the Community Advisory Commission for four years and the Planning Commission for eight years. He is moving on to obtain a doctorate in business and this is his last day on the Planning Commission.

**VI.
PLANNING COMMISSION
CHAIR SERVICE PLAQUE**

Ms. Heyden asked Chair Nitafan to join her at the podium and she presented him with a plaque from the City in honor of his outstanding service on the Planning Commission including his time serving as Chair, and for his dedication to the Milpitas community. A light refreshment break was called to honor Chair Nitafan's service as Chair. Meeting was called back to order at 7:20 p.m.

**VII.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

**VIII.
ELECTION OF OFFICERS
(CHAIR & VICE CHAIR)**

Chair Nitafan thanked staff for their work with the Planning Commission and stepped down from the Commission. Ms. Heyden opened up nominations for Chair and Vice Chair.

Commissioner Sandhu nominated Vice Chair Lalwani for Chair. Vice Chair Lalwani accepted the nomination.

Commissioner Mohsin nominated Commissioner Garcia for Vice Chair. Commissioner Garcia accepted the nomination.

Motion to close the nominations.

M/S: Sandhu/Garcia.

AYES: 5

NOES: 0

There were no other nominations for Chair and Vice Chair. The commission voted unanimously to accept the nominations of Vice Chair Lalwani for Chair and Commissioner Garcia for Vice Chair.

IX.
CONSENT CALENDAR
Consent Item Nos. 1, 2 & 3

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Lalwani opened the public hearing on Consent Items No. 1, 2 & 3.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Items No. 1, 2, & 3.

M/S: Sandhu/Giordano

AYES: 5

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1, 2 & 3.

***1 REVOCATION OF USE PERMIT AMENDMENT NO. UA2003-15 (AD2004-8)** *(Continued from June 23, 2004)*: A request to revoke Use Permit Amendment No. UA2003-15 for live entertainment, including dancing and karaoke, at the Manila Natori restaurant at 579 South Main Street (APN: 086-11-012), zoned Mixed Use (MXD). Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: No further action on the revocation)*

***2 'USE PERMIT NO. UP2004-8, 'S' ZONE APPROVAL AMENDMENT NO. SA2004-28 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2004-6**: A request to install an approximately 60 foot tall artificial tree pole, six (6) telecommunication antennas and associated ground mounted equipment located at 1525 McCarthy Boulevard (APN: 086-03-079), zoned Light Industrial (M1). Applicant: Cingular Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2367) *(Recommendation: Approve Use Permit No. UP2004-8 and "S" Zone Approval-Amendment No. SA2004-28 with conditions and adopt the related Negative Declaration (Environmental Impact Assessment No. EA2004-6))*

***3 USE PERMIT NO. UP2004-14**: A request to operate a new 1,271 square foot restaurant with 30 seats located at 530 Barber Lane at Milpitas Square shopping center (APN: 086-01-043), zoned General Commercial (C2). Applicant: Momomi Kato. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2374) *(Recommendation: Approval with Conditions)*

M/S: Sandhu/Giordano

AYES: 5

NOES: 0

X.
ADJOURNMENT

There being no further business, the meeting was adjourned at 7:28 p.m. to the next regular meeting of August 11, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

August 11, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Garcia, Giordano and Sandhu
Absent: Galang and Mohsin
Staff: Carrington, Cuciz, Heyden and King

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Julie Cherry, 2312 Lacey Drive, is with the Milpitas Alliance for the Arts. She stated that she is present to support Adage School of Performing Arts. Adage was recently notified of a 75% increase in their rent in their current space. They now have more than two hundred students enrolled in their programs and are outgrowing their current space. Adage is considering moving to a new location to accommodate their growth and would like to lease a site at 458 South Hillview Drive. They applied for a zoning variance and were informed that the area is not zoned for dance studios. Only two areas are zoned for this use in Milpitas - their current building and their competitor, Jensen's School for the Performing Arts. They prefer to be located in a different area from Jensens. They were also informed that if their facility use was noted as an athletic facility that they could occupy the site at 458 South Hillview. However, they are not an athletic facility, they are a dance studio. The Alliance for the Arts is supportive of cultural activities and would like the City to respect and support the development of new dance opportunities by reviewing their zoning definitions. Ms. Cherry is requesting that the City consider how a dance studio and athletic studio are functionally different. From their point of view, this use has similar parking requirements, clientele and business hours as an athletic facility. Ms. Cherry asked the commission to consider putting this on the agenda for the next meeting to consider the zoning for the space so that they can sign a lease and move in. She stated that this is a wonderful organization and a majority of their clientele are Milpitas residents. If they can get into this new space, they can grow and open up more opportunities to Milpitas residents.

**IV.
APPROVAL OF MINUTES
July 28, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of July 28, 2004.

There were no changes from staff.

Motion to approve the minutes.

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

**V.
ANNOUNCEMENTS**

Tambri Heyden, Acting Planning and Neighborhood Services Director, announced that there will be a presentation on the Draft Streetscape Design for Main and Abel Streets on August 18th at 6:00 p.m. at the Cracolice building.

Commissioner Giordano asked how this meeting was advertised. Ms. Heyden stated that notices were sent to all businesses in the area and nearby neighborhoods.

Commissioner Sandhu extended an invitation on behalf of the SIKH Foundation of Milpitas. He noted that everyone present and those listening at home are welcome to attend the Milpitas Cultural Night, which will be held on August 21, 2004, at the Milpitas Community Center.

Commissioner Giordano noted that the commissioners had received copies of the City Council agenda and minutes and would like this process to continue.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 2 and 3**

Chair Lalwani opened the public hearing on Consent Item Nos. 2 and 3.

Ms. Heyden noted that on item number two, there were changes to two conditions and the applicant agreed with the changes.

There were no speakers from the audience.

Vice Chair Garcia requested to take item 4 off of the consent calendar.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 2 and 3.

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2 and 3.

***2 MAJOR TENTATIVE PARCEL MAP NO. MA2004-1:** A request for a major tentative parcel map to convert one industrial building to five (5) condominium ownerships located at 601 Vista Way (APN: 086-29-069), zoned Heavy Industrial (M2). Applicant: Mahesh Patel. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 3175) (*Recommendation: Approval with Conditions*)

- *3 GENERAL PLAN CONFORMANCE FOR THE VACATION OF PUBLIC RIGHT-OF-WAY (WELLER LANE AND WINSOR STREET):** A request for the vacations of the southern portion of East Weller Lane and the northern portion of Winsor Avenue to accommodate the future library on North Main Street. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Find the partial vacations of Weller Lane and Winsor Street are in conformance with the General Plan)*

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

VIII. PUBLIC HEARING

1. USE PERMIT NO. UP2004-15: A request to operate an auto rental agency at Calaveras Square shopping center, at 148 West Calaveras Boulevard (APN: 022-24-037), zoned General Commercial (C2). Applicant: Avis Rent-A-Car. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ#2376) *(Recommendation: Approval with Conditions)*

Dennis Carrington, Senior Planner, presented Use Permit No. UP2004-15, a request to operate an auto rental agency at Calaveras Square shopping center. Mr. Carrington recommended approval with conditions on the project that would limit the number of parking spaces to seven to accommodate two employees and five rental cars. An analysis of parking was made during peak times by the applicant and the finding was that 15% of parking was used.

Chair Lalwani asked if the applicant would like to make a presentation.

Diane Gibson and Chester Hunter, Applicants for Avis Rent-A-Car, were present. Mr. Hunter stated that they did some studies and noted that many of their clients are from Milpitas who then have to go to one of the Avis locations in Fremont, Santa Clara or the San Jose airport. They rent to large agencies in Milpitas such as Cisco and KLA who rent cars on a long-term basis. He stated that they can be a great partner with the City of Milpitas. With the noted conditions, they will be keeping autos to a minimum and will not have any mechanical work handled at this location.

Chair Lalwani opened the public hearing.

David Souza, business owner at 101 Serra Way, and **Lynn Pham,** business owner at 103 Serra Way, addressed the commission. Mr. Souza stated that he has a business there and manages the building and his parents own the building. He stated his concern that this is not an appropriate location for a rental car company and that this type of business is typically found in an industrial area and other areas with additional parking and facilities. He does not believe that they can operate a business successfully with only seven cars maximum including those for employees. He stated that this is a situation where they start with a few cars and he is afraid it will expand over time. He is worried about a parking problem for the businesses and noted that Fire trucks park there as well. He stated that Avis' usage will be much more than their proportionate share of the rent and their share for maintenance. He spoke with two other rental agencies in town, they admitted that at times they have twenty cars and do not know where to park them. The other rental agencies specialize in weekend rentals and insurance collision repair replacements. He thinks there will be more of a problem with Avis because they typically do weekday rentals. He stated that Avis approached him two months ago wanting to know if he would rent space to them and he said no.

Commissioner Giordano stated that Mr. Souza made some good points and asked how many square feet his business uses, as well as the size of the entire building. Mr. Souza stated that he leases 1,050 square feet and the entire building is 4,000 square feet. Commissioner Giordano noted that the Avis would be leasing 1,050 square feet.

Commissioner Giordano asked how many parking spaces are allocated to his business. Mr. Souza stated that he did not know. Ms. Pham stated that all of the spaces are shared and all members of the complex can park within these spaces. Ms. Pham stated that the business owners are paying for the cost of parking maintenance, while Avis will receive the benefit of the use. Mr. Souza stated the spaces are striped but they are not designated for any particular business.

Commissioner Giordano stated that they could research to ensure that there is adequate parking. She asked how many spaces they use. Ms. Pham stated that it varies and Postal Stop and Farmers Insurance are next to her business. She noted that Postal Stop has several clients throughout the day and her clients have to park in the back. Mr. Souza stated that his business typically uses five spaces, in addition, there could be up to three more spaces used.

Commissioner Giordano noted that the use of seven parking spaces for 1,050 square feet sounds excessive and she asked staff if this is the typical ratio. Mr. Carrington stated that the typical ratio for 1,000 sq. ft. is up to three spaces (or about one space per 300 square feet.) Commissioner Giordano noted that they would typically be assigned three spaces, so seven is a push for 1,050 square feet. Ms. Heyden noted that there could be differences between what actually happens at a particular location versus what is required by the code. Mr. Carrington added that condition number three states that they shall not use more than seven parking spaces at any time. If they do use more than seven spaces, the City would begin enforcement against them. Commissioner Giordano asked how the City would know if they violated this condition. Mr. Carrington stated that someone would complain. At that point, the City would either get them to comply or begin revocation of their permit. Mr. Souza stated his concern that once a business has started, it is going to be within their nature to expand, not downsize. He believes that once they are in business, it would be a difficult process to deal with them if they are out of compliance.

Commissioner Giordano asked Ms. Pham how long her business has operated there. Ms. Pham stated since 1987.

**Close Public Hearing
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

Commissioner Sandhu asked the applicant if they would have trucks or vans at this location. The applicant noted that they may have passenger vans that hold eight people.

Vice Chair Garcia noted that the usual allowed parking for 1,000 sq. ft. is around three spaces and this is obviously going to be more. He stated that he is assuming that the study showing 15% usage at peak time was a factor in staff's decision to allow this use. He asked staff how many of the parking spaces are allocated to this building. Mr. Carrington stated that parking is not allocated by building, there is a minimum required by square foot and the usage is considered as well. This would vary over time as to parking required for a particular building. Typically if there is sufficient parking overall in the center and someone requests more parking, then there is research into the current parking situation. He noted that Troy Fujimoto, Associate Planner, verified that there are always spaces available at this center and due to this, staff has no problem recommending approval of this use permit.

Commissioner Sandhu commented that sometime ago, another agency approached the City about opening a rental facility near Calaveras and Dempsey Road. The Planning Commission approved this, but he does not know if the business opened yet. He believes this is a good business for the City and residents will support this proposal.

Commissioner Giordano stated that she cannot support the proposal this evening. She believes that the parking would be excessive. She noted that there are only five rental cars for the business, which doesn't make sense in terms of operating a business. She leases cars at Enterprise on Main Street and they have much more than five rental cars. Something does not make sense and the only way to rationalize this is to look at 1,000 square feet for business purposes where the allocation is three spaces and if a business exceeds this, it's not going to work so she stated she would be voting against the project.

Ms. Heyden noted a point to think about since the business owners have raised a valid question and to avoid being in a code enforcement mode. The center has many spaces that are not used and the survey was probably pretty accurate. The larger issue is where people are actually parking. The Planning Commission could have a prohibition against parking, storing or displaying rental cars in front of tenant space so that they have to park away from the building where there are lots of spaces that are not being used.

Mr. Carrington suggested that a condition be applied that would read "The applicant shall not park rental vehicles in front of tenant spaces". The Commission agreed.

Commissioner Giordano asked if there is any space that is not being leased. She noted the discussions about extra spaces and this could be relative to the vacant office space. Ms. Pham stated that there are unrented offices and that is why there are so many spaces. Commissioner Giordano noted if this is approved, then spaces are essentially being borrowed from a future tenant and she does not want to see this happen.

Motion to approve Use Permit No. UP2004-15, with all the special conditions noted in the staff report including the added condition suggested above.

M/S: Sandhu/Garcia

AYES: 3

NOES: 1 (Giordano)

**IX.
NEW BUSINESS**

Under New Business, Ms. Heyden stated that **Blair King, Assistant City Manager**, is present to answer any questions from the commission.

**4. GENERAL PLAN
CONFORMANCE FOR
THE SALE OF CITY OF
MILPITAS PROPERTY
TO THE MILPITAS
REDEVELOPMENT**

AGENCY: A request for a General Plan conformance finding for the sale of eight (8) City of Milpitas properties located within the Redevelopment Project Area One to the Milpitas Redevelopment Agency. Staff Contact: Blair King, (408) 586-3060.
(Recommendation: Find that the disposition and continued public use of the subject properties are in conformance with the General Plan)

Vice Chair Garcia noted that this item is in conformance with the General Plan and he does not have an issue with this. He asked about the staff report and why the City is doing this and if it is budgeted as part of the bond issue dollars.

Mr. King responded that bond proceeds would not be used for this transaction, so therefore it was not put in the bond. He noted that the Redevelopment plan was amended; this gave the Redevelopment Agency (RDA) a larger financial capacity and more flexibility. The plan was amended in order to pursue economic development goals, construct public facilities and also to assist the city in terms of its' General Fund. One of the reasons is for management purposes in order to have the RDA acquire property for control purposes and financial reasons. The Redevelopment plan allows the RDA to acquire land. There are some legal mechanisms that allow for the RDA and its' special tax increment money to be moved into the General Fund and one way is through this transaction. In terms of budgeting, the city's General Fund budget did anticipate that at least \$6.1 million dollars would be placed within the budget during fiscal year 2004-2005 in this transaction. He stated some of the facts about the sale that they will be presenting to the City Council. The value represented is slightly over \$20 million, which primarily will be carried as a note. Prior to June 30, 2005, \$6.1 million will be transferred to the General Fund. The rest will be callable and that will allow for cushion in the future if the General Fund should need it and if the RDA has the assets available.

Motion to approve the Major Tentative Parcel Map No. MA2004-1.

M/S: Garcia/Sandhu

AYES: 4

NOES: 0

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:33 p.m. to the next regular meeting of August 25, 2004.

Respectfully Submitted,

Tambri Heyden
Acting Planning and Neighborhood
Services Director

Holly Cuciz
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

August 25, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Cuciz, Heyden, Lindsay and Armendariz

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**IV.
APPROVAL OF MINUTES
August 11, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of August 11, 2004.

There were no changes from staff.

Motion to approve the minutes.

M/S: Giordano/Galang

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, acknowledged Tambri Heyden for covering several meetings during his vacation.

Commissioner Sandhu spoke on behalf of the SIKH foundation and thanked all residents who attended the Milpitas Cultural Night on August 21st. He stated that this event was a wonderful success due to the goodwill of City of Milpitas and residents.

Vice Chair Garcia requested an item to be put on the next agenda to consider changing the meeting night of the Planning Commission from Wednesday to Thursday evenings. Mr. Lindsay will agendize this item for the meeting on September 8th.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 1 and 2**

Chair Lalwani opened the public hearing on Consent Item Nos. 1 and 2.

Mr. Lindsay stated that there are no changes, however, he noted that a letter was received and staff prepared a cover memo that was distributed to the commissioners that addresses the letter. This issue was brought up before, and the City Attorney's office determined that it is not a City issue and the application was processed legally and properly. This happens to be a consistent dispute between the property manager and the landlord.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 1 and 2.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 1 and 2.

***1 SIX-MONTH REVIEW (PR2004-7) OF USE PERMIT AMENDMENT NO.**

UA2003-4: A six-month review of Use Permit Amendment No. UA2003-4 for the addition of live entertainment, full alcohol sales and extended hours of operation to an existing restaurant (Royal City) located at 90 South Abel Street (APN: 022-24-045), zoned Mixed Use (MXD). Applicant: Young Thai. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2316) (*Recommendation: Note Receipt and File*)

***2 SIX MONTH REVIEW OF FOUR (4) RESTAURANTS AT CRESCENT SQUARE (PR2004-3, 4, 5 and 6):**

A six month review of four restaurants at Crescent Square shopping center to verify compliance with conditions of approval related to odor generation and waste handling issues, zoned neighborhood commercial (C-1) (APN: 022-02-049). The restaurants include the following: 1) Thai Town at 1783 North Milpitas Boulevard, Use Permit No. 1537, 2) China First Express at 1741 North Milpitas Boulevard, Use Permit No. 1566, 3) Quizno's at 1735 North Milpitas Boulevard, Use Permit No. 1551 and 4) Kang Nam Tofu House at 1747 North Milpitas Boulevard, Use Permit No. 1547. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ#'s 2195, 2227, 2379 and 2382) (*Recommendation: Note Receipt and File*)

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VIII.
PUBLIC HEARING**

**3. REVIEW OF
STREETSCAPE PLANS
FOR MAIN AND ABLE
STREETS:**

Proposed enhancements to the landscaping, sidewalks, street furniture and lighting for Main Street between Railroad Court and Curtis Avenue and for Abel Street between Weller Lane and Great Mall Parkway. Project Planner: James Lindsay (408) 586-3274. *(Recommendation: Recommend the City Council Approve the Streetscape Design)*

James Lindsay, Acting Planning Manager, presented a Review Of Streetscape Plans For Main And Able Streets. He stated that his introduction would be followed by a presentation by Greg Tung, the City's design consultant. He acknowledged that several letters were received regarding community input. There was notification to business and property owners for a meeting that was held on August 18th to review the plans, which enabled staff to engage with property owners who have specific concerns. The design was well received from the community and a number of concerns were noted.

Chair Lalwani noted that the commission had just received letters from the community this evening, not giving adequate time for review of their concerns. Mr. Lindsay stated that he would try to illustrate their concerns in his presentation. He noted that after staffs' presentation and through public comment, there should be enough information for the Commission to make a recommendation.

Mr. Lindsay displayed a map of the Midtown Area and reviewed the Specific Plan policies related to the Main and Able streetscapes. He explained that staff is working with a team of consultants to renovate the streetscapes along Main and Able Streets. The design envisioned for Able Street is a lush landscaped boulevard making it a more pleasant place to drive, whereas Main Street would be more of a pedestrian environment. The current bike lanes on Main Street would be moved to Able Street, which would open up street parking for businesses.

Mr. Lindsay presented the design concepts for Able Street. Able Street currently does not have landscape medians. He explained that there are many boulevards throughout the County with successful retail businesses and landscape medians, where people do not have left turn access into businesses. Mr. Donovan, owner of the Serra Center, raised a concern over the potential preclusion of a left turn lane into the Serra Center from Able Street. Mr. Donovan provided letters to the commission and staff met with him to talk about traffic movements into Serra Center. Staff agreed to conduct some traffic modeling and will report back to Mr. Donovan and his consultant. Staff is committed to work with businesses to find a win-win solution. Mr. Lindsay reminded the commission that this is not necessarily a final plan. There will be continuing progress reports to the commission and City Council. He is asking the commission to look at the design concepts and hopefully will they have enough information this evening to make a recommendation to the City Council.

Greg Tung, Friedman, Tung & Bottomly Urban Design, presented the streetscape concepts for Main Street. He stated that the plan will help fulfill and implement the first phase of the Midtown Specific Plan, which is part of a revitalization effort and fulfills the vision for Main Street. This design supports the idea of arriving at a special place. He reviewed special features including decorative lighting, benches, bus shelters, trash receptacles and tree grades and guards. He also reviewed the best types of trees to be used in the area and presented various gateway landmark features for future consideration by the public and city officials.

Commissioner Giordano noted that the plan is broad based and conceptual and asked why it took a year to develop. Mr. Tung responded that there were a number of components involved including civil engineering design work as all utilities will go underground. Even though it has been a year, the concept is essentially set to begin due to the extensive amount of research already completed. The city will need to determine how to proceed and a follow up team could take the design forward and go to construction very quickly. The only parts not completed are the gateway elements and construction documents, which would need to be executed for a bid. Mr. Lindsay reiterated the fact that staff had to deal with the underground issues first. He noted this is still considered conceptual, however, staff had to go through a systematic process and look at different constraints within the area, although everything is still subject to change. Mr. Tung gave an example that there were not any maps for underground areas and they needed to use ground-penetrating radar to find concrete slabs, which are areas where tree planting should be avoided.

Commissioner Giordano stated the need to understand the Commission's charge and duty as this was the first time she had seen this plan. She was unable to attend the recent community meeting. She has questions and is concerned about making a quick decision this evening. Mr. Lindsay stated that staff is hoping that the Commission can review and comment on the streetscape design this evening. He noted that this is an implementation effort. Normally the Commission would receive capital projects once a year, however, this project is Midtown related. There is an opportunity to forward the Commissioner's comments to the City Council and get final direction from them before the final design phase. He clarified that the project will not be implemented all at once. Commissioner Giordano noted that the original plan for the Midtown core had a park and she does not see this here. Mr. Tung responded that this design only focuses on the street design. Mr. Lindsay noted that Mr. Tung's firm is also working on the Town Square component and the precise plan which is a coordinated development effort within the core area. What the Planning Commission will see in a couple months is a draft set of policies of how to work in that precise plan area where the Town Square is envisioned. The Town Square would be in the vicinity of Serra and Main so the intersection could possibly serve as an entryway to some type of public plaza or open green space. It could be privately owned, but would be an amenity for everyone to use. Staff is still working out the details.

Commissioner Giordano asked about the height of the trees that will be planted along Main Street. Mr. Tung noted that the trees will be 15 feet high, however, in a few years the trees will grow to over 25 or 30 feet. The species they are recommending would be a locust, which grows quickly. Commissioner Giordano noted that a number of design options were presented for landmarks and asked if these will be selected sometime later. Mr. Tung responded that these ideas are being presented as part of the entry sequence. The Commission may comment on those they have seen this evening and would be useful for staff to take forward. Commissioner Giordano asked if the gateway elements were reviewed at the community meeting. Mr. Tung stated that he did not receive any specific input on landmarks. Mr. Lindsay stated that staff provided a brief summary of concerns from the community meeting the staff report and the landmarks were not one of their concerns from the meeting. The community concerns were related to implementation of the plans and median locations on Able Street. He noted that staff realizes the gateway features are important to the community and will require more public feedback, as well as feedback from the Arts Commission. The Commission can comment this evening and this is something that will come back to the Commission to look at for further refinement.

Commissioner Giordano asked if the trees presented a maintenance problem. Mr. Tung responded that the trees will require maintenance. Whenever there are streetscape amenities, maintenance will increase and this would create the need for a coordinated maintenance program. Mr. Lindsay noted that at the community meeting, people recognized that maintenance obligations would clearly increase with the amenities that are being proposed and there would be a need to look at how additional maintenance costs could be paid. These issues are still to be worked out with the City Council and staff is looking at different funding opportunities to maintain a streetscape like this. The details of this plan were reviewed with maintenance staff. Originally there was a different species for the street trees, but maintenance staff provided feedback about maintenance issues and the tree species was changed. For instance, Sycamore trees tend to clog storm drains due to their large leaves. Commissioner Giordano asked if were minutes taken at the community meeting that would have the names of those in attendance. Mr. Lindsay stated that he has a roster and the consultant did take notes. Commissioner Giordano clarified that this was the first time any of the owners had a chance to look at the plans. Mr. Lindsay said yes.

Vice Chair Garcia congratulated staff and the consultants on their work and stated that he thinks this is a good plan. He noted that many of the amenities look like they are commercially available which is good for future replacement needs. He asked if there will be overhead wires in the area. Mr. Lindsay said that all overhead utilities will be underground. Vice Chair Garcia asked if the entire Midtown area utilities would be underground. Mr. Lindsay stated that the utilities in the entire area would not be underground, only those with streetscape development such as Main and Able Streets. All of Main Street will be within the undergrounding district. Vice Chair Garcia stated his concern about the timing of the development. Mr. Lindsay stated that KB Homes has submitted a proposal to build homes along Able Street and the Able Street renovation would occur first from the north end southward to be complete once homes are for sale. The timeframe would be 18 to 24 months. The first phase of the Main Street renovation would be between Weller and Carlo and would coincide with construction of the new library, which is a 4-year timeframe. Vice Chair Garcia asked if the first evidence of completed development would be within 1 to 1 1/2 years with final implementation 6 to 7 years out all the way to the Jain Center. Mr. Lindsay said that there is no identified RDA funding to develop the complete section of Main Street all the way to the Jain Center. Once there is more development on Main Street and the City begins to receive tax increment money, they can start thinking about developing further down Main – at this point the timing is too speculative to suggest a date.

Commissioner Galang asked about the proposal to put an island at Calaveras and Serra that would have palm trees. He also asked if there would be an island in the area of Main coming from Weller and if there would be an island near Curtis. Mr. Tung responded that they are proposing a short island in the center north of Curtis. Commissioner Galang asked what would happen to the existing trees and where new lights would be placed. Mr. Tung noted that the trees would be replaced and lights would be centered between the trees. Commissioner Galang stated his concern about safety at the pedestrian crossing and asked if there would be speed bumps. Mr. Tung noted that there will be a series of different strategies that will slow down traffic, such as one lane in each direction and keeping the street narrow, along with the bulb out approach of the sidewalk at intersections. They looked at the issue of other traffic calming measures and do not want to treat the area like a parking lot by putting in speed bump. **Raul Laborin from Nolte Associates**, stated that the overall project creates a traffic-calming environment.

Commissioner Galang asked about angled parking. Mr. Tung stated that the space is too restrictive.

Commissioner Sandhu asked about the implementation schedule and if private property owners will be encouraged to develop their property simultaneously. Mr. Lindsay stated that staff is hopeful that this will inspire property owners to work on their property to have consistent storefronts and this is showing property owners that high quality is expected. Also, this should make a further incentive to property owners and developers to invest in this area. Commissioner Sandhu asked about the area beyond Montague. Mr. Lindsay stated that staff is planning on implementing Main Street before moving on to other areas. The Great Mall Parkway would serve as the next area to develop and other streets would be looked at in the future. Commissioner Sandhu asked if there are any plans for bicycle stands on Main given that the bike lanes will be moved to Abel. Mr. Lindsay noted that there would be bike racks on Main. Moving the bike lane was a trade off for having parking on Main. Commissioner Sandhu wanted to make sure that bicycles will not be prohibited on Main. Mr. Lindsay noted that bicycles would be allowed on Main and there will be wider sidewalks.

Commissioner Mohsin noted that most of her questions had been answered and thanked staff and the consultant for their detailed report. She is concerned that the area remain “bicycle friendly” and asked about the number of bike stands. Mr. Tung noted that bike stands will be place every 90 feet. Mr. Lindsay stated that the plans is increasing the number bicycle amenities from what is currently present. Mr. Tung noted that in most cases bicyclists may lock bikes to other areas and recreational cyclists will most likely walk bikes on sidewalks and can take Able Street to cut over to Main Street. Additional racks can be placed on Main Street if demand rises.

Mr. George Donovan, Serra Shopping Center, 200 Serra Way, had sent a letter to each commissioner and noted that several of them had not seen the letter before the meeting. The letter addresses his concerns about the plan. Although he was in attendance, he did not comment on all of the items at that meeting. He thinks the gateway concept is good, however, he does not like any of the designs and has not adequate time to respond effectively. There are a number of questions that remain unanswered for him and other property owners. He asked about the number of letters that staff had received. Mr. Lindsay noted that there were four letters including the one from Mr. Donovan. Mr. Donovan noted that he met with Mr. Lindsay, and Greg Armendariz, the Assistant City Engineer. Also, he stated that he had to retain a traffic engineer who was present at the meeting as well. He noted that staff has said they will respond to his questions. He referred to the project as a rocket and stated that if the Commission recommends the plan tonight and launches the rocket, it will then be difficult to stop it after takeoff.

He asked the Commission to take the time to understand the detail of what is being presented. His letter notes problems with the Able Street plan and the need to obtain more information. He stated that the street designs and traffic patterns for the future must be related to the Midtown Plan EIR. He noted that beautiful streetscapes may be created, but this could also create bumper-to-bumper traffic. He noted that this is a great vision, but needs to know that his will truly work. He noted that traffic is growing as the area expands and does not want to see low lying ground cover instead of trees. He is concerned that a yes vote this evening would result in a plan that does not address the issues of access to Serra Shopping Center and that the City would not address the access problems in the future. Also, the dedication of the land to the city that is now Able Street was made by his family in the 1960s and they paid for the street improvements and the access was established at that time to Serra Shopping Center. He noted that he was giving the Commission a sense of history by introducing his mother, Margaret Able Donovan, who was present with him. He noted that forcing people to make a U Turn to access the shopping center is unacceptable. These decisions must be grounded in factual traffic numbers.

Bob Olinger spoke as an owner of property on Main Street for 30 years and representing a minimum of 12 property owners in the core of the area. He stated that he concurs completely with Mr. Donovan. He noted the desire for everyone to know what is happening with the plans and he realizes the need to move forward, however, they need to know the details. He thinks the plans would be detrimental to Able Street. He noted that he just found out this his letter was not received by the Commission. He has objections to the library project as there is already a library in town and the city is making this a number one priority. He stated that Able and Main needs to be the number one priority. He stated that need to do something for the business people and they do not want to lose tenants. When tenants moved from Main Street to Town Center, they did not succeed. He sold a dozen properties in that strip, 40 down Main St. Mr. Lindsay stated that staff did not receive a letter from Mr. Olinger, perhaps it came in the Commissioner's personal mail.

Robert Yen, 670 Los Pinos, represents 17 tenants at Able. He stated that he did not receive notice to attend the community meeting and that his tenants would be interested in hearing details. He stated that this is a good plan, but they need to proceed cautiously. He noted the very heavy traffic on Main Street during the commute and that if they lanes are too narrow lanes, traffic will be stopped. He stated that the plan is a one-dimensional structure, as opposed to Palo Alto, which he believes is two-dimensional. Decorative lighting and large trees creates a safety concern. He requested to have his name added to the mailing list for future notifications.

Wanda Olinger, 89 South Main Street noted stated that the first time anyone from public saw the plan was at the meeting last Wednesday. She noted that there was considerable discussion and she is concerned that only a week has passed and now the item is before the Commission for approval. She stated that other issues, including traffic problems need to be addressed before this moves forward. She is concerned that the city is moving forward with a new Library when one already exists. She is also concerned about the construction work to underground the utilities and how this would negatively impact businesses. She stated that the issue needs to be tabled for further study and more due diligence.

Chair Lalwani noted that a notification about this item was placed in the Milpitas Post. Mr. Lindsay also stated that staff gave notices to the business and property owners with the intention of having the meeting last week as a focus group. The notice was mailed to all addressees on record.

Frank DeSchmidt, has an office at 16 Corning, noted that he circulates throughout the Main Street area on a regular basis. He spoke about the concept of center medians and left turns only at intersections. He asked if there had been studies to determine if an average automobile can actually make a U turn and if larger vehicles could make U turns for access purposes or if they have to travel further in order to make the turn.

Vice Chair Garcia also had questions about U turns and access into Serra Shopping Center. He noted that there would be a median on Serra that would prevent turning northbound into Serra Shopping Center and his concern about access for the center. He also asked if there any traffic studies. Mr. Lindsay noted that staff conducted field tests and measurements for U-turns. Staff concluded that U turns are possible, and the capacity for U turns is not significantly impacted. Mr. Lindsay noted that the median on Serra is limited, the exact dimensions are still subject to change. There is currently an island at Serra and Calaveras. He noted that with the landscape median that is conceptually being considered, the access to Serra Center would not be significantly impacted. The Serra Center has access from Serra, Calaveras, Junipero, and Able Street. The access points along Serra, Junipero and Calaveras would still be available for the Center. Staff has committed to looking closely at the median that would prevent a left turn. When there were longer stretches of medians, staff has proposed median breaks into businesses, but when the medians are short landscaping was maximized which would preclude breaks. He noted that these are all subject to further refinement. Vice Chair Garcia noted that the only fault he sees is access to Abel Square and Serra Center. He stated that it makes sense to keep the break in the median and he would strongly recommend this to the City Council.

Chair Lalwani closed the public hearing.

Commissioner Mohsin noted her concern regarding U turn areas as she has seen problems at N. Milpitas Blvd. and Dixon Landing when vehicles make U Turns to access Walgreens. She asked about the traffic studies. Mr. Lindsay noted that

there have been field studies and measurements and staff is certain that U turns are possible on Able Street. He noted that in reviewing the possibility of having landscape medians, one tool used was the city's accident history map. Staff was surprised to discover that in areas with landscape medians, traffic accidents are reduced. Even with the perception that a U turn is inconvenient, it is actually safer in many areas.

Mr. Donovan noted that in his recent meeting with Mr. Lindsay, the City's traffic engineer said that if the existing left turn access into Serra Center was eliminated, it would possibly create a major problem with trucks that would then need to go make a U turn. There may be studies that have been completed regarding autos, however the traffic engineer mentioned the need to look at what will happen with trucks. If there is data about traffic accidents along Able Street, he would like to review this data and suggested that the Commission should review this before moving forward. In his letter, he mentioned that that Midtown Plan does have a provision for a change of use for the project in the future. In looking at the current plan, they should consider that a possible future use could be high-density office space.

Commissioner Mohsin asked if a study was conducted regarding parallel parking. Mr. Lindsay stated that 99% of Main St. will not have a median at all. There will be a short median near Curtis and Weller. Traffic and civil engineering studies show that this can be very successful and have been supportive.

Commissioner Giordano stated the Commission has gone through a significant amount of material over the course of the meeting and several issues have been raised. She noted that more questions have come up and we have received additional public input. She is not certain that the Commission is under any time constraints to have this move forward immediately. She noted that the commissioners have at least four letters that they have not had a chance to review. She was unable to attend the community meeting. She suggested moving this item to a future meeting for approval in order to have more time to review the issues before making a recommendation. She also requested a copy of the notes from the community meeting of August 18th, as well as staff's comments in response to their concerns. She also requested information about the traffic concerns. She requested staff's response to the letters received by the Commission. She also noted that a property owner who spoke this evening who was not notified of the meeting and others may come forward who were previously unaware of the plans.

Chair Lalwani stated that staff has some additional input before going further.

Greg Armendariz, Assistant City Engineer, stated that staff is very excited about this Midtown Plan. He stated their commitment to work with business owners. He noted that the purpose of the community meeting last week was to begin a dialogue and obtain comments from the public. He met with Mr. Donovan earlier in the week and obtained information regarding traffic patterns. He is having the City's traffic engineer gather more information after school begins. Also, a follow up meeting is scheduled with Mr. Donovan for September 28th. He stated that the medians should improve traffic flow and the City has had success with similar medians on Park Victoria at Landess where there used to be more traffic congestion and accidents. Although there are minor U turn issues, this was a bigger problem before the medians were there. He stated his reassurance of staff's intent and commitment to work with the community. He anticipates continued dialogue and will keep everyone informed, particularly when the construction phase begins. He noted that staff does not want to lose a single business due to construction issues and will look at successful ways to deal with this issue, and will put special requirements into the construction contracts.

Commissioner Mohsin added that she would like the area to see a traffic report and additional data.

Commissioner Giordano suggested reviewing this item again at the meeting on September 22, 2004.

Mr. Lindsay stated that Mr. Armendariz had mentioned that staff will be meeting with Mr. Donovan on September 28th, and that is the earliest that staff could deliver a response on that section of Able between Junipero and Serra. Currently this is the only area brought up as a concern because of the businesses on either side of Able. This is the area that staff has been studying. At the request of the businesses, staff will conduct further traffic studies in this area. This is the only additional traffic studies that staff will be conducting until there is more dialogue with businesses. The studies will not be complete by the September 22nd Commission meeting.

Commissioner Giordano was not aware of the studies being conducted for the meeting on September 28th and she suggested reviewing the item during the first Commission meeting following September 28th. Mr. Lindsay stated that this is not a public hearing so they do not have to continue to a certain date. These issues are typical responses when dealing with this type of plan. Through this project staff will be in constant contact with the public. This is the beginning of the project and staff is looking for general direction from the Commission.

Commissioner Sandhu stated that most residents are waiting for this plan to be implemented. He stated that he would make a motion, if acceptable, to move the item forward to City Council with a recommendation that there should be left turn access to Serra Center and Able Plaza.

Commissioner Giordano stated that they should review the issues that transpired at the community meeting first before making a recommendation to City Council.

Commissioner Galang stated that the Commission needs more information about traffic issues before making a recommendation to the City Council. He is concerned about the loss of left turn access to Serra Center and asked staff to hold another meeting for business and property owners.

Motion to reagendize the Review Of Streetscape Plans for For Main and Able Streets to the first Planning Commission meeting following September 28, 2004.

M/S: Giordano/Galang

AYES: 4

NOES: 2 (Garcia, Sandhu)

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 9:34 p.m. to the next regular meeting of September 8, 2004.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Holly Cuciz
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 8, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Lindsay, Pereira and Rodriguez

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**IV.
APPROVAL OF MINUTES
August 25, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of August 25, 2004.

There were no changes from staff.

Motion to approve the minutes.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, announced that the Council requests all Commissioners to attend Ethics code training, at the Milpitas Community Center from 7 to 9 p.m. on October 7th or October 20th. He asked the Commissioners to RSVP to Veronica Rodriguez with the date. Also, the Economic Development Commission will have a forum on Milpitas' economy on Monday, September 13th at 6 p.m. in the Committee conference room.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Garcia/Giordano

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 2 and 3**

Chair Lalwani opened the public hearing on Consent Item Nos. 2 and 3.

There were no speakers from the audience.

APPROVED
PLANNING COMMISSION MINUTES
September 8, 2004

**Continue Public Hearing to
September 22, 2004**

Motion to continue the public hearing to September 22, 2004.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2 and 3.

***2 PLANNED UNIT DEVELOPMENT NO. PD2004-1, "S" ZONE APPROVAL NO. SZ2003-11 AND USE PERMIT NO. UP2003-37:** Request for a residential Planned Unit Development with a maximum density of 216 senior and multifamily units, including three, 5-story buildings for the senior development with associated site improvements which include development standard deviations and a use permit for a parking reduction located at 1696 South Main Street (APN's: 086-34-017, -019 and -020), zoned "R4" Multifamily Very High Density. Applicant: USA Properties Fund. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 3165) *(Recommendation: Continue to September 22, 2004)*

***3 USE PERMIT NO. UP2004-10:** Request to install six (6) telecommunication panel antennas on an existing PG&E lattice tower and associated ground mounted equipment on 2 adjacent parcels located at 865 Vasona Street (APN's: 022-05-077 and 079), zoned Single Family Residential (R1-6). Applicant: Cingular Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2369) *(Recommendation: Continue to September 22, 2004)*

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VIII.
PUBLIC HEARING**

1. "S" ZONE APPROVAL NO. SZ2003-7 AND USE PERMIT NO. UP2003-28: *A request for a commercial development consisting of 2 buildings (1 and 2 stories), associated site improvements, and a use permit for a parking reduction on the property located at 790 East Capitol Avenue. Applicant: Brian Tan.*

Staci Pereira, Assistant Planner, presented "S"Zone Approval No. SZ2003-7 and Use Permit No. UP2003-28, a request for a commercial development consisting of 2 buildings (1 and 2 stories), associated site improvements, and a use permit for a parking reduction on the property located at 790 East Capitol Avenue (APN: 086-37-025), zoned "C2-TOD" General Commercial with Transit-Oriented District Overlay. Ms. Pereira recommended approval with conditions based on the findings and special conditions noted in the staff report and also to add the following special condition:

41. UTILITIES. The developer shall remove utility pole number 1 and underground all existing wires between the utility poles number 1 and 2, with the exception of transmission lines supported by metal poles carrying voltages of 37.5KV or more do not have to be undergrounded. All proposed utilities within the development should also be underground. (E)

Vice Chair Garcia asked if the City has anything in the code to prevent people who are riding the light rail to view roof top equipment. Ms. Pereira stated that staff does enforce screening of roof top equipment because there is nothing in the code to enforce screening from elevated views.

Vice Chair Garcia noticed that the road on Trimble is blocked off at the Union Pacific Railroad tracks. He asked if there are there any plans to reopen the road. Ms. Pereira stated that staff met with the City of San Jose and there are no future plans of opening up the road.

Vice Chair Garcia asked if there would be any changes to the railroad tracks since BART is coming to the East Capitol area. Ms. Pereira replied that there will be site improvements associated with BART, however, the project is not immediately adjacent to BART and is separated by the Apian Engineering site and there will not be any impacts to the project.

Vice Chair Garcia noted that there used to be an old gas station in the area that had hydrocarbon. He asked if there any chances of hazards or any problems associate with the project. Ms. Pereira noted that staff received a case closure letter from the Regional Water Quality Board and that the case has been closed and no further remediation is recommended at this time.

Vice Chair Garcia noted that a \$32,627 traffic impact fee is requested up front from the applicant and asked if there will be any other charges imposed on the applicant. Ms. Pereira replied that staff is requesting the fee from the applicant up front prior to building permit issuance and it is a one-time fee.

Commissioner Giordano asked staff to explain how the 20% Transit Overlay Districts (TOD) parking reduction is calculated. Ms. Pereira replied that part of the midtown plan adoption, there were TOD overlay districts, and this project resides in the TOD overlay district in the southern portion of the Midtown Plan area. The TOD overlays were based on the properties proximity to the future BART and light rail stations, and all properties within a quarter mile radius of the stations received a TOD overlay. It has been estimated that all properties of a quarter mile of the transit facility would use that facility, and therefore a parking reduction could be granted.

Commissioner Giordano asked how staff came up with a quarter of a mile radius. Mr. Lindsay referred the Commission to the big screen that showed the Midtown land use map. He brought to their attention the quarter mile radius areas that were adopted and that a 20% parking reduction is standard for the industry and VTA. It is a walkable distance and studies have shown that mass transit usage increased with less reliance on cars and more reliance for transit.

Commissioner Giordano asked if on-street parking is accounted for on-site parking shortage. Ms. Pereira replied that the Midtown Plan allows for the property frontage to accommodate the required on site parking. Staff takes the average dimension of a parallel stall to see how many cars can be accommodated.

Li-Sheng Fu, Architect for the project, explained that the basic concept of the project is creating a gateway for the City of Milpitas. He noted that one issue came up with the project this afternoon that staff is not aware of. The owner would like to relocate the square roof from the back to the side so that there will be better visibility from the streets to the clinic.

Mr. Lindsay noted that considering that staff is not sure of the magnitude of the change, he requested that the Commission consider the project as it is presented this evening, and staff will work with the applicant.

Vice Chair Garcia complimented the projected, and said that even if it is modified slightly, it is a vast improvement of what is there now, and from fits in nicely to the concept of midtown, and the adjacent building on the street. It is a really good project that will take the place of a bad looking corner.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

Close the public hearing

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Commissioner Giordano asked to better understand the City's internal staffing structure and whether any traffic studies were done and reviewed and approved by Transportation staff. Ms. Pereira stated that Hexagon performed a traffic study that was included as an attachment in the Commissioner's packet. She noted that it was submitted with a previous submittal in 2003, but there were no significant changes with the trip generation, therefore, it still applies to this version of the project and Transportation Planning approved the study. The results of the study were used to calculate the traffic impact fee for the project.

Motion to approve "S" Zone Approval No. SZ2003-7 and Use Permit No. UP2003-28 with added special condition no. 41.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

IX. NEW BUSINESS

2. **PLANNING COMMISSION MEETING SCHEDULE:**

*Consider
request to change the
Commission's meeting
schedule from the 2nd and 4th
Wednesday of each month to
the 2nd and 4th Thursday of
each month. Staff Contact:
James Lindsay.*

James Lindsay, Acting Planning Manager, presented a request from Vice Chair Garcia to consider a request to change the Commission's meeting schedule from the 2nd and 4th Wednesday of each month to the 2nd and 4th Thursday of each month.

Commissioner Giordano said she would have difficulties with the date change because she is a girl scout leader and they meet every Thursdays. If she had known sooner, she could have changed the date. Thursday meetings will really impact her schedule this year. She would be willing to look at it the beginning of next year.

Vice Chair Garcia clarified that the rationale for requesting the day change is because he has business travel that occurs in the middle of the week. He travels on Monday and comes back on a Wednesday or Thursday. For example, he came back from Atlanta to attend tonight's meeting. He knows that most business travel occurs mid week, and Wednesday meetings are becoming more difficult for him to attend. He also believes that applicants' pool for the Commission is somewhat limited as a result of Wednesday meetings. He talked to a person that would like to be a planning commissioner, however he cannot make it to the Wednesday night meeting. So he is proposing that the Commission change the meeting to a Thursday night. He is also not in disagreement to have this schedule change starting next year because he knows at this point, the Commission would have to take the request to the Council.

Mr. Lindsay brought up a couple of potential conflicts in considering a Thursday night meeting. 1) If the commission requests staff take this to City Council for consideration, he would recommend the 1st and 3rd Thursday of the month because the Youth Advisory commission meets on the 2nd Thursday and the Sister Cities Commission meets on the 4th Thursday of the month. 2) In the month of November, there would not be a Thursday meeting because of the Veterans Day and Thanksgiving Day holidays. 3) There could be potential conflicts with the Comcast staffing of the video control room and 4) The deadline for the 2005 city calendar to post the commission meeting dates is October 8th.

Commissioner Sandhu felt that many commissioners have made a commitment to meet on Wednesdays and other days are not available based on work schedules. He felt that if the Commission has to make a decision, it should be a unanimous decision rather than a traditional vote. Vice Chair Garcia agreed with Commissioner Sandhu.

Vice Chair Garcia made a **motion** to change the Planning Commission meetings to the first and third Thursdays of the month starting the first of the year, 2005, and Commissioner Giordano seconded the motion.

Don Peoples, 529 South Main Street, President of Milpitas Downtown Association, felt that Wednesday nights are the busiest day of the week for him. For example, three other commissions meet on Wednesdays – the historical society, the milpitas community band and the YMCA. He felt that if the Planning Commission would move to Thursday, it would make more people be able to come to the meetings and participate.

Vice Chair Lalwani, stated that Thursdays do not suit her, she is part of a board which will go on till next June, so if she has to change the whole board has to change, so for her vote, Thursdays do not suit her at least till Thursday of next year.

Mr. Lindsay explained that when a motion is passed by the majority then the motion will pass. If the maker of the motion intends to have a unanimous decision, staff would recommend a straw vote so the maker of the motion can either withdraw the motion or continue it.

Commissioner Mohsin noted that she is also on a board that meets on Thursdays and Wednesday are the most convenient day for her.

Commissioner Galang noted that Wednesdays are the best for him as well and he has a busy schedule on Thursday.

After further discussion, Vice Chair Garcia withdrew his motion and noted that he will not be attending the September 22, 2004 due to business travel.

Chair Lalwani commented that there might be future changes on the Commission and at this time, the motion fails.

**X.
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:39 p.m. to the next regular meeting of September 22, 2004.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

September 22, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Giordano, Mohsin and Sandhu
Absent: Garcia
Staff: Heyden, Carrington, Cuciz, and Lindsay

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**IV.
APPROVAL OF MINUTES
September 8, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of September 8, 2004.

There were no changes from staff.

Commissioner Sandhu noted a change to page five, second paragraph from the bottom of the page, it should read "Commissioner Sandhu" instead of "Commission Sandhu."

Motion to approve the minutes as amended.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

James Lindsay, Acting Planning Manager, noted that staff has been working on a development proposal by KB homes for over a year and the public process is beginning. He wanted to make the commissioners aware of several dates regarding this project. On October 7, 2004, KB Homes will hold a community meeting in the Fire Training Room at Fire Station 1, beginning at 6:30 p.m. Staff will attend to take notes, but KB Homes will be conducting the meeting independent of staff. The project will also be on the Planning Commission agenda of October 13, 2004 for a work session so the commission can see the design and provide comments. On October 20, 2004, staff will conduct an EIR meeting at the Cracolice building at 6:00 p.m. with the purpose of presenting the draft Environmental Impact Report to the public. Staff is hoping to bring the KB Home design to the Planning Commission again in November. Currently, there is only one Planning Commission meeting scheduled in November which will be held on November 10, 2004, and staff will be asking the commission to consider moving that meeting to November 17, 2004, and either still having only one meeting in November, or having a second commission meeting where the Planning Commission would meet on both November 10, 2004, and November 17, 2004. These dates can be considered at the next Planning Commission meeting.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 1 and 2**

Staff had clarification on item 5 (Use Permit No. UP2004-25) and noted that a memo was distributed referring to new condition of approval on this item. Staff requested for this item to remain on the consent calendar with the extra condition noted as follows:

Prior to issuance of certificate of occupancy, the applicant shall provide proof that there is a City of Milpitas General Plan and Midtown Specific Plan prominently displayed on the premises and shall be referred to each homebuyer. (P)

Staff requested that item 1 should be added to the consent calendar. There is a letter from the applicant requesting a continuance, as they need an additional month to work out the details on this item. The Public Hearing can remain open with the item on consent and be continued to the Planning Commission meeting of October 27, 2004.

Chair Lalwani opened the public hearing on Consent Item Nos. 3, 4 and 5.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 3, 4 and 5.

M/S: Sandhu/Mohsin

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 3, 4 and 5.

Add Item No. 1 since it was put on consent

***3 USE PERMIT NO. UP2004-10** (*Continued from September 8, 2004*): Request to install six (6) telecommunication panel antennas on an existing PG&E lattice tower and associated ground mounted equipment on 2 adjacent parcels located at 865 Vasona Street (APN's: 022-05-077 and 079), zoned Single Family Residential (R1-6). Applicant: Cingular Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2369) (*Recommendation: Approval with Conditions*)

***4 USE PERMIT NO. UP2004-18 AND S-ZONE APPROVAL AMENDMENT NO. (SA2004-71)**: A request to locate telecommunication antennas inside the existing 93 foot tall elevator tower at the Great Mall Shopping Center, zoned C-2 (General Commercial), at 1100 Main Street (APN: 086-24-055). Applicant: Tetratex for Nextel of California. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2383) (*Recommendation: Approval with Conditions*)

***5 USE PERMIT NO. UP2004-25:** A request for a temporary tract office and signs for the Parc Place residential project, zoned R-4 (Multi-Family Very High Density), at 95 E. Curtis Avenue (APN: 086-25-024). Applicant: Craig Champion. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 3169) *(Recommendation: Approval with Conditions)*

Motion to add item 1 to consent calendar.

M/S: Sandhu/Mohsin

AYES: 6

NOES: 0

Motion to approve consent calendar item 1.

M/S: Sandhu/Galang

AYES: 6

NOES: 0

**2. CONSIDERATION OF
AMENDMENTS TO THE
ZONING ORDINANCE,
SIGN ORDINANCE AND
NEIGHBORHOOD
BEAUTIFICATION
ORDINANCE TEXTS
(ZT2004-2):**

Tambri Heyden, Acting Planning and Neighborhood Services Director, presented background information on this item. She stated that this item was presented to the City Council approximately five months ago to expand the code enforcement program. The City Council requested staff to move to phase two of the Neighborhood Beautification Ordinance Program that was originally initiated by the CAC and has been in affect for three years. Staff also requested a transition from a complaint driven program to staff canvassing residential and non-residential areas to detect violations. When staff brought this proposal to the City Council, they requested review from the CAC and Economic Development Commission, which has occurred, in addition to the standard Planning Commission review. This item has been advertised for City Council for a first reading on October 5, 2004. Staff is using this opportunity to make the sign code more user friendly, as it is an old and outdated ordinance. Many of the sections have been moved and consolidated.

Dennis Carrington presented item 2, Consideration Of Amendments To The Zoning Ordinance And Neighborhood Beautification Ordinance Texts (ZT2004-2), and reviewed the amendments to the code. He noted that staff has proposed definitions that are typically in ordinances throughout the state. For instance, there are several uses of the word "temporary" sign in the ordinance and in any other jurisdiction these are referred to as window signs which is a change being proposed by staff. This is an example of some of the minor changes proposed which provide clarification and characterize most of the changes. Also, all prohibited signs have been moved into one section.

Garage sales sign are now permitted in greenways and staff is proposing a clarification that they be freestanding and not attached to public utility poles or on public property. No substantive changes on open house directional signs other than they must be freestanding. Staff is also working on the ordinance to provide equity in the way the rules are implemented. Another change includes reducing the amount of time for someone to comply when they have been sited for a nuisance from the current time of 30 days down to 15 days.

Commissioner Mohsin asked for clarification on freestanding signs for garage sales. Mr. Carrington responded that these signs could be on a stick or could be an A frame sign, however, these signs should not be attached to signal or utility poles. Staff would like it to be clear in the ordinance that the city prohibits signs on signal and utility poles and this is a liability and creates public safety issues. Commissioner Mohsin asked where the public could get free standing signs. Mr. Carrington responded that anyone could easily obtain materials at Home Depot and put a sign in the greenway where it won't block official signage that needs to be seen. There are ways to have signage where it's not on a utility pole

Commissioner Giordano provided some history as she had chaired a sign review subcommittee some time ago during her prior service on the Planning Commission and went through an intense review process. She stated that she realizes that the ordinance needs to be updated and she appreciates the effort from staff. She noted that during the review process, they had a group of people that would be affected such as business groups and realtors, and the group also included members from the Planning Commission and the CAC, among others. They also looked for direction from some community groups as well. As she recalls, they reviewed what other cities were doing and then they moved it forward to the City Council. She finds the current material confusing as it makes reference to balloon signs and references to what other cities are doing and how they prohibit certain signs. Then there is a reference to open house directional signs yet there is no reference that compares this to other cities. There is also confusion about coming soon signs. Perhaps the commission needs to review each part and make a determination to agree or disagree. The process involved should be different than how it's being presented now and she would like to have more time to review the issue. She asked if this was born out of a City Council action taken five months ago to review the sign ordinance or if this is part of the neighborhood beautification process.

Mr. Carrington replied that he can address citations and the City Council did give direction to make these regulations more equitable across the ordinances (sign, neighborhood beautification and zoning ordinances.) Staff saw inefficiencies in the ordinance and saw a need to repackage it. It's the same information but it is coordinated differently. And where there were no regulations or definitions staff is proposing some. Staff is making a proposal for the Planning Commission to adopt the sign program, which would be a flexible approach for providing signage for major commercial and industrial developments. This would be very business and development friendly while giving the city exceptional signage. Staff has worked to make the ordinance easier to understand and administer.

Commissioner Giordano stated her concern about moving this item forward to the City Council. She is concerned that there are deviations beyond the definitions and there is policy that is being set. She stated that she would like to hear from members of the public.

Commissioner Sandhu stated that he has seen people holding balloon signs for buildings and apartments and asked if that is covered in the ordinance. Mr. Carrington said yes and this type of sign would be prohibited under Moving Signs. Commissioner Sandhu asked about electronic signs. Carrington stated that those are a different kind of signage not being addressed and he is recommending that the City should have a flexible approach and would have reader board signs included if necessary,

but there would be a prohibition against someone standing on the corner swinging a sign. Commissioner Sandhu asked about the change proposing fifteen days as opposed to thirty days to correct a violation. Mr. Carrington stated that typically in a violation situation, the violator will wait until the last day to comply and very often they have been in the system with prior violations. Staff does have the flexibility to allow more time if necessary depending on the issue. Commissioner Sandhu asked who would determine the amount of time. Ms. Heyden stated that code enforcement staff would make the decision and the violator could come into City Hall or call city staff if they have a hardship.

Commissioner Galang asked about blinking and flashing signs and those that direct a spotlight to a sign. Mr. Carrington stated that illumination is not a problem, however, Las Vegas style blinking lights would be prohibited which can be very distracting to drivers. Commissioner Galang asked about kids putting balloons on mailboxes for parties. Mr. Carrington stated that the city does not regulate that.

Chair Lalwani opened the public hearing.

Nicholas Ammann with SCORE, a realtors group, requested a continuance on this item. He noted some confusion with the issue. He stated that they do not necessarily have a problem with the policy, however, they have not had adequate time to review it as they only received the information the day before this meeting.

Tim Howard, 491 Santos Drive, stated that he agrees with Commissioner Giordano about having a subcommittee to review this issue. He stated that this effort is too rushed and he has only had a day to review this. He stated his confusion and believes that there are more than simple administrative changes in the ordinance. Some questions include how much the administrative fee will be and how it works. Also, he is concerned about freestanding garage sale signs being required as A frames, yet under Section 6 he read that A frames are prohibited unless you are a realtor. Also, citizens that have garage sales will not read the sign ordinance and will not know that they are in violation. Limiting a banner to 30x24 inches does not always work for the design layout it makes more sense to dictate size, not square feet. The limitations to the coming soon sign are problematic as well, especially when a larger project needs a bigger sign. He stated the need to know the appeal process for sign violations or fines. He stated the need for more public input and suggested deferring this item to a later date.

George Donovan, 200 Serra Way, owner and manager Serra Shopping Center. He has had Serra Shopping Center since 1967 and has never been cited for signs. He stated that he concurs with the speakers and agrees that this issue has been rushed. There are a variety of issues that will impact those affected. He suggested obtaining more public input and he asked if the commission received the letters. He noted a meeting scheduled later this week with the Santa Clara County Association of Realtors and the National Association of Industrial and Office Property Owners and he suggested waiting until after this meeting to make a decision. All of the letters sent to the commissioner are consistent. The community needs more time to analyze the economic impact of the proposed amendments to the ordinance. He stated the he saw the matrix for the first time only six business days ago. There are more than sixty pages of material and six days is not adequate time for the public to respond. He stated that the details of the ordinance are the job of the Planning Commission and hopes that they will take a more detailed look before moving this on to the City Council. He requested that the Planning Commission carefully review the ordinance, address issues being raised, and have a dialogue with the community and continue this item.

Ed Connor, 1515 N. Milpitas Blvd. He stated that the first amendment allows for free speech and that is what a sign is. He stated his confusion about this item and does not think this is necessary.

Gaye Moranda, Executive Manager, Milpitas Chamber of Commerce, stated that the Chamber is having a board meeting tomorrow and they have not had a chance to review this. She recalled that there was a subcommittee several years ago. She stated that it is good to look at beautification from time to time. She requested a postponement of this item to give the chamber time to review this issue. She suggested a subcommittee with a cross section from the business community before making a final decision.

Don Peoples, property and business owner at 529 S. Main Street. He stated that he would like to see a specific process. He stated the he recognizes the need for a sign ordinance that is clear and accessible. He stated that there needs to be control of temporary signs and he can see temporary signs looking out his front door. There happens to be a chain link fence across from his property that always gets plastered with signs and he stated that there is not a mechanism to deal with this sign problem. He stated that he has had confrontations with people when he is trying to deal with the sign issue and that they plaster signs all over the city. He stated that it would be good to know that people who put up signs have applied for a permit and that he could know when it is appropriate to take a sign down or when to call the city. He stated that there are advantages to amending the ordinance and encourages the dialogue to continue.

Don Ryan, 2144 LaCuesta Drive. He stated that the review is excellent, however, he is disappointed that the community was not involved. He has concerns about 3x3 foot car signs and how the signs on city vehicles would now need to be reduced and who would pay for this. He has concerns about the permits that will be needed, but there were no projections of costs for administering permits. He requested more input from the community before moving forward.

Frank De Smidt, Milpitas Chamber of Commerce, Government Affairs Committee. He stated an aspect not brought up yet that scares him and that is to change the philosophy of enforcement from complaint driven reports to staff reporting. He stated that this is a time when the economy is weak and this seems to be a new obstacle to a business being successful if being sought out for violations. He also stated his concern about moving and garage sale signs, which will affect the neighborhoods. He is also concerned about signs for Girl Scouts, Boy Scouts and car washes and how this would affect young people. Also, he stated issues about signs for political demonstrations. He stated that all of these issues need to be explored in more detail before taking action.

Motion to close the public hearing.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

Chair Lalwani asked staff who received information about this issue and when they received it. Ms. Heyden stated that the CAC received this information one week before their meeting on September 1st, and the Economic Development Commission received it one week before their meeting on September 13th. Chair Lalwani asked if businesses received a notice. Ms. Heyden stated that no specific notices were sent to businesses. Ms. Heyden requested to make a suggestion as staff has some minimum needs in terms of changes to the code in order to begin the expanded code enforcement program. She noted that staff recognizes the need to review the entire sign code comprehensively next year and would hire a consultant to work with staff on this issue and there would be significant community outreach at that time as well. Ms. Heyden asked if the Planning Commission would consider the idea of only passing on five components in the ordinance that would; 1) allow administrative citation authority to the sign code and the NBO; 2) definition of individual violations versus continuous violations; 3) reduction in timeframe from 30 to 15 days to comply with a violation; 4) sign registration for temporary signs (which is a free process); and 5) allowing sign programs rather than variances to deviate from the sign code. Ms. Heyden asked if the Planning Commission could move these five components forward at this time and table the remaining issues with the sign code for a much later date to look at the sign code more comprehensively and form a subcommittee.

Chair Lalwani clarified that staff is asking for these five components to be approved and the remaining issues will be tabled until further review next year.

Commissioner Galang stated that he needs more time to understand the issues and there is a need for more public input. His recommendation is to continue this item to the next Planning Commission meeting. He noted that if staff is looking for approval on a major issue, he would like discussions at prior meetings first.

Commissioner Giordano stated that she does not want to pass this item, nor does she want to approve portions of the ordinance at this time. She stated that staff could come back with specific urgent issues at a future meeting for critical needs. She stated the need to restart the process, and she knows that staff has completed much of the work already. She is looking for consensus to have this issue addressed by the City Council and have them create the solution and they could create a subcommittee. In the past, the City Council had created the subcommittee that she participated on. Ms. Heyden noted that the five components that staff is looking for approval on were presented to the City Council as a proposal without specific code language yet, to get policy direction from them. The City Council did direct staff to move forward and put these issues in ordinance form, as well as obtaining feedback from the CAC, Economic Development Commission and the Planning Commission. She stated that staff can put the five components in a document and bring those back to the Planning Commission at their next meeting.

Commissioner Sandhu stated that the commission has heard many concerns from the public this evening. He stated that there has not been enough public input yet and he cannot vote to move the proposal forward at this point.

Commissioner Mohsin requested that staff should obtain more input from the community and then provide more time to understand the document before it comes back to the commission. She noted that the item should be tabled at this time and brought back at a later date.

Commissioner Giordano reiterated that this issue has been addressed in the past and typically there has been a subcommittee or task force and she is concerned that this is not happening at this time. She noted the need for someone to designate how this process will proceed (i.e. the City Council, Planning Commission or staff.) Ms. Heyden noted that the City Council gave staff direction to deal with these issues. Ms. Heyden suggested striking this item from the agenda and bringing back the individual components that need to be dealt with right away.

Motion to direct staff to create a subcommittee to review the sign ordinance then bring this issue back to the Planning Commission for review.

M/S: Mohsin/Giordano

AYES: 6

NOES: 0

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:25 p.m. to the next regular meeting of October 13, 2004.

Respectfully Submitted,

James Lindsey
Acting Planning Manager

Holly Cuciz
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 13, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: All present
Staff: Carrington, Cuciz, Fujimoto, Heyden and Lindsay

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**IV.
APPROVAL OF MINUTES
September 22, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of September 22, 2004.

Staff requested a change to page two of the minutes to include the text of the additional Special Condition added to Item No. 5 (Use Permit No. UP2004-25):

Prior to issuance of certificate of occupancy, the applicant shall provide proof that there is a City of Milpitas General Plan and Midtown Specific Plan prominently displayed on the premises and shall be referred to each homebuyer. (P)

Motion to approve the minutes as amended.

M/S: Sandhu/Giordano

Abstention: Garcia

AYES: 5

NOES: 0

**V.
ANNOUNCEMENTS**

There were no announcements.

**VI.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**VII.
CONSENT CALENDAR
Consent Item Nos. 2, 3 4, 5,
6, 7, 8 and 14**

A memo was distributed to the commissioners from Mr. Fujimoto recommending five additional conditions to be added to item 14.

Chair Lalwani opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6, 7, and 8.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 2, 3, 4, 5, 6, 7, and 8.

M/S: Giordano/Garcia

AYES: 6

NOES: 0

Vice Chair Garcia asked a question on consent item number 8. He wanted to know if the applicant would be coming back with a revision of their plan. Mr. Lindsay indicated they intend to come back with a revised project plan, however, this will not happen for several months.

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7, 8 and 14.

***2 MAJOR TENTATIVE PARCEL MAP NO. MA2004-2:** A request to subdivide an existing 44,465 square foot industrial building into twenty-one (21) condominium units for individual ownership, located at 991 Montague Expressway (Fleming Business Park) (APN: 086-31-059), zoned Heavy Industrial (M2). Applicant: Tim Nguyen. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2380) (*Recommendation: Approval with Conditions*)

***3 USE PERMIT NO. UP2004-20 AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-77:** A request to install a two-sided complex ID and directory freestanding monument sign measuring 10' x 4'-6" located at 1000 Ames Avenue (APN: 086-31-054), zoned "M2" Heavy Industrial. Applicant: Sign Classics. Project Planner: Cindy Hom, (408) 586-3284. (PJ# 2390) (*Recommendation: Approval with Conditions*)

***4 USE PERMIT NO. UP2004-23:** A request to locate a dental laboratory at 40 North Victoria (APN: 029-13-014), zoned Administrative and Professional Office (CO) district. Applicant: Keith Tae Kim. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2393) (*Recommendation: Approval with Conditions*)

***5 USE PERMIT NO. UP2004-26:** A request for a reduction of two parking (2) spaces required by the ordinance for a bank locating in an existing retail tenant space at 139 Ranch Drive (APN: 022-53-003), zoned "C2" General Commercial. Applicant: Wells Fargo Bank. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2394) (*Recommendation: Approval with Conditions*)

***6 "S" ZONE APPROVAL AMENDMENT NO. SA2004-73 AND USE PERMIT NO. UP2004-19:** A request to install three (3) panel antennas behind the rooftop parapet and associated mechanical equipment atop the Crown Plaza Hotel located at 777 Bellevue Drive (APN: 086-47-002), zoned "HS" Highway Services. Applicant: Sprint PCS. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2385) (*Recommendation: Approval with Conditions*)

***7 USE PERMIT AMENDMENT NO. UA2004-7 and "S" ZONE APPROVAL AMENDMENT NO. SA2004-76:** A request to remove and replace three (3) telecommunication panel antennas on an existing monopole and addition of ground mounted equipment located at 1010 Ames Avenue (APN: 086-31-055), zoned Heavy Industrial (M2). Project Applicant: Nextel/Crown Castle. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2389) *(Recommendation: Approval with Conditions)*

***8 PLANNED UNIT DEVELOPMENT NO. PD2004-1, "S' ZONE APPROVAL NO. SZ2003-11 AND USE PERMIT NO. UP2003-37** *(Continued from September 22, 2004)*: A request for a residential Planned Unit Development with a maximum density of 216 senior and multifamily units, including two, 5-story buildings for the senior development with associated site improvements which include development standard deviations and a use permit for a parking reduction on the properties located at 75 Montague Expressway and 1696 South Main Street (APN's: 086-34-017, -019 and -020), zoned "R4" Multifamily Very High Density. Applicant: USA Properties Fund. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 3165) *(Recommendation: Note Receipt and File)*

***14 "S" ZONE AMENDMENT (SA2004-89):** A request to have an outdoor display or for-sale products at the front of the Ocean Supermarket, 2 South Park Victoria Drive (APN: 088-04-078), zoned Neighborhood Commercial (C1). Applicant: Ocean Supermarket. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

VIII. PUBLIC HEARING

1. USE PERMIT NO. UP2004-16 AND MITIGATED NEGATIVE DECLARATION NO. EA2004-7:

Troy Fujimoto, Project Planner, presented Use Permit No. UP2004-16 and Mitigated Negative Declaration No. EA2004-7, a request for A request for approval of a 2,450 square foot religious facility, a parking modification, and the adoption of a mitigated negative declaration in an existing building at 380 Montague Expressway.

Commissioner Giordano asked if the parking requirement has always been one space per five seats. Mr. Fujimoto said yes this is the requirement for religious uses. Commissioner Giordano asked if staff accounted for future growth of the church. Mr. Fujimoto replied yes and stated that there is adequate parking, based on their peak usage and the time that other tenants use the parking area.

Vice Chair Garcia requested clarification on the proposed change in the temporary ordinance prohibiting non-industrial uses of industrial facilities. Mr. Lindsay stated there is an item about quasi-public uses that will be heard by the commission this evening and a moratorium will be considered by the City Council on October 19th. The use described in this item does fit within the definition of a quasi-public use within an industrial zoning district. Staff is seeing more of these types of applications for religious facilities and other types of assembly. Staff believes that this is a legitimate policy question to put before the commission and City Council to consider whether or not these uses should be continued in the industrial area and if so, perhaps there should be a distance requirement so that there will not be an undue concentration of these uses. Staff is asking the Planning Commission to provide direction to study the issue on a later item and staff has also asked the City Council to consider an emergency ordinance, which would impose a temporary moratorium on approving these types of uses in the industrial area, until staff has had time to study it. As it relates to this particular application, the moratorium and direction from the commission on the later item would not affect this application. Staff has structured the moratorium ordinance so that it would not affect applications that are currently pending. Vice Chair Garcia commented that these applications are essentially getting in under the wire. He also asked if there are other applications now where this is the case. Mr. Lindsay said yes.

Chair Lalwani opened the public hearing on item 1.

Pastor Tim Wynn, 377 Paseo Refugio, stated this his organization has performed a risk assessment as required. Based on the results of the Hazardous Material Management Plan review and Immediate Dangerous Life and Health study, it is unlikely that the church or individual services would be impacted by worst-case release of chemicals from the neighboring facilities. In addition, the neighboring facilities appear to be in compliance with environmental agencies and past releases were not identified, therefore there is a low potential of a catastrophe in this area of the proposed Next Generation Christian Fellowship.

Commissioner Mohsin asked about the condition that, "prior to occupancy that applicant shall complete a risk assessment"; and asked if that is what the pastor had just presented. Mr. Fujimoto said he believes so, however, staff has not had a chance to review it yet. Commissioner Mohsin asked if this item would be coming back to the Planning Commission. Mr. Fujimoto said no, however, the recommendations in the study are required to be followed by the applicant and staff will verify that this occurs.

Motion to close the public hearing on item 1.

M/S: Sandhu/Galang

AYES: 6

NOES: 0

Motion to approve Use Permit No. UP2004-16 and Mitigated Negative Declaration No. EA2004-7.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

9. REVIEW OF STREETSCAPE PLANS FOR MAIN AND ABEL STREETS

Mr. Lindsay noted that this item was continued from the August 25th Planning Commission meeting as the commission had asked that this item be reagendized to obtain addition information for businesses near the Serra Center about a raised median along Abel Street. Mr. Lindsay stated that the information has been provided in the packets as well as staff's responses to issues brought up at the community meeting. There were some concerns from businesses and property owners at the August 25th meeting in the vicinity of the Serra Center. They were concerned about a planned raised median that would block existing turning movements. Staff stated that a traffic consultant studied the area and the original median plan has been modified to address the concerns.

Kevin Wyse, President of Wyse Civil Engineers, stated that he studied the area and prepared traffic counts and studied turning movements. The prior proposal had the intersection of the Serra Center driveway at Abel Street restricted with the landscape median. He noted that after traffic counts were summarized, it was determined that there are enough existing traffic turning movements to open up the intersection and provide basically the same turning movements that the Serra Center has now. He stated that he met with business owners and addressed their concerns. He also noted that Mr. Lindsay received an e-mail from George Donovan voicing his support for this modification.

Commissioner Giordano thanked staff for bringing back the questions and answers from the community meeting. She asked if the city would be requesting contributions from all developers and what formula would be used for this calculation. Mr. Lindsay stated that two projects are being considered at this point (Main St. and Able St.) and the reimbursement or developer contribution for these improvements will be looked at in terms of scope and timing. For instance, the large project on Able will have a developer contribution. When looking at Main Street and the improvements being considered in front of the senior housing, medical clinic and library, the Redevelopment Agency will cover all of those costs. At this point, it is envisioned that that RDA would continue to play a role in funding streetscape improvements where these are being used as an economic tool for development to occur. If large-scale developments similar to KB Homes occur on Main St. then it's very possible that the City would be looking for developer cooperation to leverage funds. At that point, the City would look at the percentage of street frontage and the scope of the project. There is not a quick and easy formula to use as it depends on the nature and timing of the submittal. Also, there are some private properties on North Main that will benefit from an improved street frontage and the city will not be seeking reimbursement from those properties if they choose to redevelop in the future north of Carlo – this would be an example of the opposite end of the spectrum.

Vice Chair Garcia asked about the left turn going southbound onto Able and if this will still be available as concerns were received about this turn. Mr. Lindsay said yes it will still be available. Mr. Wyse clarified that the left turn movement into that center today is illegal. Providing a sole left turn pocket into that center would potentially have some safety issues in terms of backing up into the Serra intersection. The numbers were not significant enough to prevent a U-turn from happening. Vice Chair Garcia asked if business owners are aware of this and if there are any objections. Mr. Lindsay stated that staff has met with one tenant and gave him six copies of the plan to distribute to other tenants. Staff also made attempts to meet with other tenants but there were some language barriers; and to date, staff has not received any additional responses so the assumption is that it's okay.

Commissioner Galang asked how the ongoing maintenance costs would be funded. Mr. Lindsay stated that additional funding would be needed to maintain the level of improvements that staff is considering along Main and Able streets. The general fund cannot fund those improvements and the long-term maintenance of them. Staff is looking for additional sources of revenue to fund the maintenance costs. The additional sources being looked at include revenue from Lighting Landscape Maintenance and Community Facilities Districts or other types of assessment districts that would have all properties in the area contributing to the benefit that they are enjoying from the enhanced streetscape. The improvements are providing benefits citywide, but also specifically to the properties in the area. Staff is continuing to research funding sources.

Motion to recommend approval of the Main and Abel Streetscape plans to the City Council.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

10. ELMWOOD DEVELOPMENT PROJECT WORK SESSION

Mr. Fujimoto provided a brief overview of the Elmwood Development Project, proposal by the applicant to construct 683 new residential units and change the land use designation of 20± acres located on the west side of South Abel Street from “General Commercial” and “Parks and Open Space” to “High Density Residential.”

Denise Cunningham, KB Homes South Bay Inc., stated that they have already held one community meeting and heard concerns about parking. She noted that there will be two space garages as well as parking for guests. There will also be rules about parking for homebuyers. There are several locations for public access to parks and parking. She noted another concern from the meeting about a buffer area for the homes and noted there would be a buffer area of about 70 feet including the road and landscaping to the front doors. She also noted that this community would be gated to prohibit commercial traffic. She stated that KB Home will continue to work closely with the City they also plan to go back to the PRCRC on November. 2nd.

Commissioner Mohsin noted the large scale of the project and her concern about guest parking. Ms. Cunningham stated the their plan for parking follows all city requirements. David Obitz, KDG Y Group, noted that the condominium portion of the project east of Able will have a total of 711 spaces for residents and guests and the total guest parking for condominiums is 93 spaces. The complete parking data for the entire project is included in the submittal. He stated that the town homes and single-family homes would have a total of 736 garage spaces and 111 guest spaces. Commissioner Mohsin asked if this is the appropriate ratio. Mr. Fujimoto stated they are required to provide 15% guest parking and their plan appears to have provided this. Commissioner Mohsin noted her concern about parking problems throughout Milpitas.

Commissioner Mohsin asked about public parks and the potential to develop tot lots. She noted that the plans mention four playgrounds. Vice Chair Garcia noted that there is a tot lot next to Able where these heavy traffic and he asked this will be screened about security. Ray Panek, KB Home South Bay Inc., noted that wrought iron fences are typically used so there is visibility, but there is also security.

Vice Chair Garcia noted that this lot is the furthest from units on the west and asked if there is a chance of moving it to the middle. Mr. Panek stated that a difficulty of the site is the geometry of it and they are working to achieve a better circulation and wanted to keep these spaces near public rights of way.

Vice Chair Garcia asked about screening from the jail and living in such a close proximity to it. Mr. Panek stated that his group had spent time at the jail with the Sheriff and that it is a quiet existence. He stated there are only one half dozen units facing the jail and a buffer has been provided including landscaping and 80 feet of Hetch Hetchy. There is a need to screen it, however, there are limits on what can be planted on Hetch Hetchy; for example, they must use shrubs as trees are not encouraged.

Commissioner Sandhu asked about the proposal for a gated community. Mr. Panek stated that gates are proposed to discourage commercial traffic. Commissioner Sandhu asked where the new signal would be location. Mr. Panek stated that they worked with the city's traffic section and a traffic engineer and determined that putting the signal near the Post Office is the best option.

Commissioner Sandhu noted that the plans show various small parks, not one large park. He asked what total acreage of parks is. Mr. Panek stated that there would be 6.5 acres in public parks and, combined with private improvements, about 13 to 14 acres.

Chair Lalwani asked what is being counted as part of a park area. Ross Doyle, RJA, noted that the 6.5 acres are the Hetch Hetchy segment east and west of Able and the Elmwood segment north of Curtis.

Commissioner Galang asked about the initials KB. Mr. Panek stated that KB Homes is the new name of a company formerly called Kaufman and Broad.

Commissioner Galang asked about amenities and if there would be an indoor gym. Ms. Cunningham stated that there would be a pool and recreation center as well as open space; however, there is not an indoor gym.

Commissioner Galang asked if there is a separate entrance to the single-family homes. Ms. Cunningham stated that the primary entrance is off Able and the area can also be accessed off the existing road that will be improved and widened, as well as the existing road running along the other side of the Hetch Hetchy. Commissioner Galang asked if there would be fencing around the community. Ms. Cunningham said yes, and this is primarily to prevent vehicular access. Commissioner Galang asked if the garages are covered. Ms. Cunningham said yes.

Commissioner Giordano asked a question about the EIR and the flood plain, as the other residential communities in that area pay flood insurance. She asked if the new homes would be required to pay flood insurance. Ms. Jensen with RJA stated that when the grading is done and the homes are built, the first finished floor would be built above the base flood line; then a letter would be sent to FEMA, which would then remove the homes from the flood area.

Commissioner Giordano asked about the rational of entry gates, as there are not entry gates at the project by the Great Mall. Mr. Lindsay stated that Park Metropolitan project next to the Great Mall does not have entry gates, however, the MonteVista apartments across the street from the mall does have them.

Commissioner Giordano asked about Palmer Street. Mr. Panek stated that there were discussions about this area. This is an isolated neighborhood and there is a preference not to have commercial traffic going through. Commissioner Giordano asking about Palmer Street abutting an existing neighborhood that does not have parks and her concern that some of those residents may like to use those facilities. She noted a successful project near Dixon and I 880 where the park was put more centrally within the complex. She asked about the ratio of residential units to the amount of park space that is plan. Mr. Lindsay stated that this touches on a bigger issue. The Dixon Landing project was built on a suburban model, however, what KB Homes is proposing is more urban and is consistent with what the City is looking for in the downtown area. The park design is more linear, however, the requirements for open space are being met, but it is a different open space model.

Commissioner Giordano asked what the lot sizes are for the single family detached homes. Mr. Panek stated that the lot size is less than 3,500. Commissioner Giordano asked about the width of the street and if there is room to park and pass around cars. Mr. Panek stated that no parking would be allowed and the streets are 20 feet wide, in addition to a 5-foot apron to the garage door; also, there are parking pockets placed on ends of streets. Commissioner Giordano stated her concern about no parking in front of single-family homes. Mr. Panek stated that this is a product that has come through in San Jose. Commissioner Giordano asked about the mix of a variety homes. She asked about creating more open space, raising the density and not having single-family homes.. Mr. Panek stated that it was designed this way due to market studies and they also want to have some differentiation from what already exists on Able. He noted that these units are for a different life style with a bigger floor area and that it is a better priced product. Commissioner Giordano suggested the elimination of Elm Park on one side and bringing that to the central area to allow for a more user friendly park which would makes sense for the community in it's entirety.

Chair Lalwani asked about the triangle park and noted that people residing on the furthest end are at a disadvantage. She asked if this could be split to accommodate another triangle park on the other side or near the center. Mr. Panek stated that there is a private park space in the middle with the idea that one side would be using private amenities and folks from the other neighborhood would use the park in their area. Chair Lalwani asked about the park area near the pool and if it is a park or a green area. Mr. Panek stated that he wouldn't call it a park, as it is a lawn area. He noted there is a clubhouse with restroom facilities, a kitchen, and a community meeting room, and they are working on putting a play structure there. Ms. Cunningham noted that she spoke in error earlier and there is a gym in the recreation center for the condominiums.

Chair Lalwani asked if a price range for the single-family homes has been determined. Mr. Panek stated that the starting price will be determined the week before sale, however, they are targeting some ranges along with an affordable component. He noted that their proformas are starting around \$350,000 for condominiums; \$400,000 to \$425,000 or higher for townhomes and in the \$500,000 and higher range for single-family homes.

Chair Lalwani noted that this is a work session and thanked everyone for their comments.

**11. AMENDMENT TO
THE 2004 PLANNING
COMMISSION
MEETING SCHEDULE**

Mr. Lindsay presented a request to reschedule the November 10th Planning Commission meeting to November 17th.

Motion to reschedule the November 10th Planning Commission meeting to November 17th.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**12. AMENDMENT TO
THE PLANNING
COMMISSION
BYLAWS**

Mr. Lindsay presented a request by staff to amend the bylaws to provide more flexibility in scheduling special meetings. He noted that a phrase within section 7.02 restricts items that the Planning Commission could consider outside of normal meeting dates.

Commissioner Giordano asked what prompted this issue. Mr. Lindsay stated it was found in the bylaws while looking into moving the Planning Commission meeting date to November 17th, which would then be considered a special meeting. The bylaws are currently structured so that the Planning Commission can only consider non-legislative items at special meetings.

Motion to amend the bylaws to provide more flexibility in scheduling special meetings.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**13. DISCUSSION OF
PROPOSED ZONING
TEXT AMENDMENTS**

Mr. Lindsay presented a request for direction on proposed zoning ordinance text amendments that would allow tutoring centers as a conditional use in the Highway Services district and impose distance requirements for quasi-public uses in the industrial zoning districts. Mr. Lindsay stated that there are two items where staff is looking for direction. The first item he addressed is the issue about tutoring centers. When the zoning ordinance was originally written, tutoring centers were not addressed in the code. The code has since been amended to allow tutoring centers in other zoning districts, but the HS was not considered at the time of those amendments. Staff is finding some tutoring centers that would like to locate within the HS district, specifically the Minnis office building. Staff believes this area would be appropriate for these types of uses as a conditional use, however, before preparing an ordinance amendment, staff would like to ask for direction and to bring the issue back to the commission at their next meeting. Specifically, staff is requesting to amend the zoning ordinance to allow the HS district to have tutoring centers as a conditional use.

Mr. Lindsay stated that the second item where staff is looking for direction relates to quasi-public uses within industrial areas. The zoning ordinance defines quasi-public uses as recreational, charitable, medical, non-profit, educational, youth and senior oriented facilities, private hospitals and religious uses that primarily serve the general public. Staff is finding that in the current industrial real estate market the rents are lower making it attractive for service and non-profit organizations. These are the types of uses that are conditional within the zoning districts. This calendar year, staff has requested that these types of uses perform risk assessments so that they can be aware of the hazards in the area and for awareness of the costs associated with being in the zoning district. The risk assessment needs to be updated every year because businesses around them can change. Staff is seeing more applications for these areas and has put together a map showing the quasi-public uses currently located within the city for the commission to review. Mr. Lindsay noted that there is an undue concentration of these types of uses within the industrial district. Staff is asking the commission for direction regarding coming back with a zoning amendment to look at a potential distance requirement. This issue has been put on the City Council agenda on October 19th for consideration of an urgency ordinance, which would be a temporary moratorium on quasi-public uses within the industrial area. If adopted by four fifths of the City Council it would last for 45 days unless the City Council chose to extend it. If it were adopted, staff would advertise a public hearing for the last City Council meeting in November to extend it. A text amendment will help provide some certainty to the businesses so that staff can tell them earlier about the requirements. This would also protect the integrity of existing business parks.

Vice Chair Garcia noted that he is happy to see this effort underway. He stated that it is important to review this and the concept of noting where the city does not want quasi-public uses in the future. He also noted the issue of a potential for lawsuits.

Joe Callahan, developer of Oak Creek Business Park and the Town Center, stated that the concept behind this proposal is good; however, there are several issues that need to be considered. He stated that many of the buildings constructed in the 1970s or 1980s are now functionally obsolete and there would probably be a lot of teardowns and different future uses. The current ordinances have specific standards for the types of uses allowed as well as addressing safety matters. The standards for hazards are good. He asked a question about the map prepared by staff.

Mr. Lindsay stated that the map shows the quantity of quasi-public uses within the industrial areas and what a one thousand foot buffer would mean. This requirement could be less than 1,000 feet or more. The reason that staff picked 1,000 feet is that within the midtown area quasi-public uses are limited to 1,000 from each other.

Mr. Callahan noted that with an increase in the population there would be an increase in demand for quasi-public uses and these provide community benefits. He cautioned the Planning Commission to not overreact and put something in place that would limit business and social activities.

Commissioner Giordano asked if staff is requesting a moratorium. Mr. Lindsay said no, staff is asking the Planning Commission for direction to do further study which will be brought back to the commission. He stated that this could be in the form of an ordinance amendment. Commissioner Giordano stated that from a legal standpoint the city has allowed these uses up to today and she is concerned about developing parameters now. She asked on what grounds does the city have to do this. She also noted that the Economic Development Commission has discussed this same topic and their feedback should be part of the solution.

Kit Faubion, City Attorney, noted that there are two points where staff is asking for direction from the Planning Commission. The question is whether or not the city should continue to review these applications on a case-by-case basis or if the city will regulate them differently. The same issues continue to be raised with the quasi-public use applications within the industrial district and it may make sense to establish a regulation to provide certainty. Staff is not proposing a solution at this point; they would like to initiate a study and this would come back to the commission with the background information. Commissioner Giordano stated that she could support a study, but not the radius of 1,000 feet. Ms. Faubion stated that the radius of 1,000 feet is more of an example that could be used as some sort of a buffer. Commissioner Giordano asked if staff needed the commission's approval to begin a study. She noted that staff could already research information. Mr. Lindsay stated that on several occasions staff has sought direction and feedback before presenting ordinances to the commission. He noted that the research involves significant staff resources and instead of making that commitment independently, staff desired to feedback up front. This is a significant issue and how the city chooses to address it is the question. Mr. Lindsay noted that staff could bring back a variety of alternatives and involve the Economic Development Commission as suggested.

Commissioner Sandhu asked if there is a requirement in the midtown plan. Mr. Lindsay said yes and stated that he agrees that some of the activity is very important for the city's diverse community. Mr. Sandhu stated that he does not see any need for a study and thinks that applications should be reviewed on a case-by-case basis.

Commissioner Mohsin asked who would be involved in this study and what type of study would be conducted. Mr. Lindsay stated that staff would look at further refinement of the map presented and would provide the commission with a detailed report of the process for a quasi-public use applicant and the ongoing monitoring process. He noted the impact on existing industrial businesses regarding potential increased insurance rates and liability.

Jason Wu, San Jose Christian Assembly, 123 Dempsey Road, stated the concern from his organization as they are in the process of moving in Milpitas and have gone through the application process. He noted that if restrictions are made this could be seen as religious discrimination against their use of the building. His organization is aware of the religious and land use law that President Clinton signed into affect in 2000. Mr. Lindsay noted that there are two concerns the speaker referred to about their application, which is still pending application Council to consider on October 19th. Within the ordinance, section three shall not apply to received applications as of the day the ordinance

Mr. Lindsay noted that none of the action the commission makes tonight would directly affect the church's application. What could affect the application is the moratorium that staff has asked the City

As currently drafted, section three of the ordinance shall not apply to received applications as of the day the ordinance becomes effective and staff has listed the church's application which would be exempt from a temporary moratorium if it was put in place. Kit Faubion stated that RILUPA says you cannot discriminate against religions or treat them differently from other places of assembly. The study that staff is proposing does not focus on churches or any type of religious assembly, rather it focuses on quasi-public uses as defined, which includes 23 various uses. It's clear that the city is not trying to keep churches from going anywhere. She does not believe this is a RILUPA issue.

Motion to approve the first portion of item 13 allowing tutoring centers as a conditional use in the Highway Services zoning district area.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Commissioner Giordano stated that in looking at uses it is good to have a match for an industrial site that is vacant. Organizations have benefited from this such as churches and Kaiser. She is not certain that there is a problem and does not want to limit industrial landowners unless there is rezoning. She is in favor of having staff converse with the Economic Development Commission. She asked staff to come back one more time and they could look at this issue with input from the Economic Development Commission.

Commissioner Galang asked about imposing 1,000-foot radius and if this means that the city is limiting a similar business. Mr. Lindsay stated that the map shows uses within a 1,000 ft radius. If an applicant wants to locate within 1,000 feet of a similar use, they are not allowed to do so if the ordinance was amended in this manner.

Vice Chair Garcia stated that it is important to study this issue and would like further research from staff, however, he is concerned about impacts to existing businesses insurance rates and liabilities that can occur. He noted the need to protect existing businesses and that there does have to be some certainty for them. He noted that from an economic standpoint the study needs to be completed, as well as looking at quasi-public uses that have already been approved.

Commissioner Mohsin would like to see a study completed and have a deeper understanding of the impacts on businesses.

Motion for staff to conduct a detailed study on quasi-public uses in the industrial zoning districts.

M/S: Mohsin/Garcia

AYES: 4

NOES: 2 (Giordano/Sandhu)

Commissioner Sandhu asked what the study would cost. Mr. Lindsay stated that staff would conduct the study with no consultant costs.

There being no further business, the meeting was adjourned at 9:47 p.m. to the next regular meeting of October 27, 2004.

**IX.
ADJOURNMENT**

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Holly Cuciz
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

October 27, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: All present
Staff: Cuciz, Duncan, Heyden and Lindsay

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

Martha McNolte, 323 Parkhill Drive, stated that she would like to have this issue put on the agenda. She expressed her unhappiness about a political mailing that arrived at her home and her concern that it is unethical. She stated that she is concerned about Police and Fire being involved as the citizens' look to them for safety and integrity. She noted that if a resident reads the literature and does not have all the background information, this could frighten them. She asked about the need for an employee group to reject a candidate.

Rob Means, 1421 Yellowstone, stated that he felt this is an opportunity to go before the public to question the political mailer. He noted an issue in the mailer about the Shapell building where the rent is low and stated that the building would be knocked down soon to build a Safeway store and that is why low rent spaces are being provided. He noted that all candidates for City Council voted in favor of this Safeway being built in that area and he feels that the mailer is an attack piece.

**IV.
APPROVAL OF MINUTES
October 13, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of October 13, 2004.

Motion to approve the minutes as amended.

M/S: Sandhu/Giordano

Abstention: Garcia

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Mr. Lindsay announced that two surveys were provided to the commission from the Recreation Department. They are in the process of looking at different ways to conduct the Commissioner Recognition Event. The commissioners are encouraged to fill out the surveys.

Commissioner Mohsin announced that on the first Friday of each month, the Milpitas Parents Preschool is going to present a free art and science enrichment class for children and parents. Everyone is welcome. The schedules are posted on channel 15. The address is 355 Dixon Road.

**VI.
CONFLICT
OF INTEREST**

Kit Faubion, City Attorney, noted that this is the first time this item has appeared on the Planning Commission agenda. It is recognizing that Planning Commissioners are among the decision makers for the City of Milpitas that are required to declare if they have a conflict of interest on a particular item on the agenda. There are complicated rules and statutory regulations that address conflict of interest and this provides a regular place on the agenda for the commissioners to advise if there is a conflict of interest. If there is a conflict, the commissioners would identify the item, the reason for the conflict and when the item is called the commissioner would then leave the room for the hearing on that item and return afterwards. This will routinely be placed on the agenda from here forward.

There were no commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**VIII.
CONSENT CALENDAR
Consent Item Nos. 3, 4, 5, 6,
7, and 8**

Chair Lalwani opened the public hearing on Consent Item Nos. 3, 4, 6, 7, 8

Mr. Lindsay noted two changes. A memo from Kim Duncan was distributed noting a special condition of approval for item #7, of which the applicant is agreeable to the change in condition. Staff is recommending that this item should remain on the consent calendar.

Mr. Lindsay asked if the commission would consider adding item #2 to the consent calendar.

Motion to add item #2 to the consent calendar.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Vice Chair Garcia asked staff about item #6 regarding the street name charity raffle. He asked what would happen if a street name is unacceptable. Mr. Lindsay stated that any street name would need to be approved by the Police Department 911 Communications to ensure there are no conflicts. Vice Chair Garcia wanted to make sure that parameters are set. Mr. Lindsay said yes.

Chair Lalwani opened the public hearing on Consent Items Nos. 2, 3, 4, and 5.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 2, 3, and 5.

M/S: Giordano/Garcia

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5, 6, 7, and 8.

***2 USE PERMIT NO. UP2004-28:** A request for a parking reduction of nine (9) parking spaces for a funeral supply store located in the Mixed Use District with a Transit Overlay (MXD-TOD) at 27 Winsor Street (APN: 028-24-028). Applicant: Kenos Inc. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2347) *(Recommendation: Approval with Conditions)*

***3 USE PERMIT NO. UP2004-24 and 'S' ZONE APPROVAL-AMENDMENT NO. SA2004-85:** A request to install six (6) telecommunication antennas on a new light standard and associated ground-mounted equipment at the Milpitas Sports Center, located at 1325 East Calaveras Boulevard (APN: 029-17-004), zoned Parks and Open Space (POS). Applicant: Verizon. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2393) *(Recommendation: Approval with Conditions)*

***4 USE PERMIT AMENDMENT NO. UA2004-8 AND AN ADDENDUM TO EIA NO. 749:** A request to modify two (2) conditions of approval related to the re-use of 60,000 square feet of gross leasable area within the Great Mall shopping center and to adopt an Addendum to a Mitigated Negative Declaration in the General Commercial District (C2) at 1100 South Main Street (APN: 086-24-055). Applicant: The Mills Corporation. Project Planner: Troy Fujimoto. (PJ# 2397) *(Recommendation: Continue to December 8, 2004)*

***5 CONSIDERATION OF ZONING ORDINANCE TEXT AMENDMENT NO. ZT2004-4:** The City proposes to amend the Zoning Ordinance adding tutoring centers as a conditional use in the Highway Services District. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Recommend adoption of ordinance to City Council)*

***6 KB HOME STREET NAME CHARITY RAFFLE:** A request from the Milpitas Unified School District (MUSD) for approval of a street name raffle for a street in the KB Home Development. Staff Contact: Tambri Heyden, (408) 586-3280. *(Recommendation: Approval)*

***7 "S" ZONE APPROVAL-AMENDMENT NO. SA2004-94:** A request to construct a 7-foot wooden enclosure and install exterior equipment at the front of an industrial building located at 212 Railroad Avenue, (APN: 028-23-009), zoned Heavy Industrial (M2) with Transit Oriented Development (TOD) overlay. Project Planner: Cindy Hom, (408) 586-3284. *(Recommendation: Approval with Conditions)*

***8 "S" ZONE APPROVAL-AMENDMENT NO. SA2004-90:** A request to install seven (7) new trash/tallow enclosures constructed of chain link with vinyl slats located at 190 Barber Lane (Milpitas Square Shopping Center) (APN: 086-01-043), zoned General Commercial (C2). Applicant: Milpitas Square, LLC. Project Planner: Kim Duncan, (408) 586-3283. (*Recommendation: Approval with Conditions*)

IX. PUBLIC HEARING

ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2004-8, 'S' ZONE APPROVAL NO. SZ2004- 3, USE PERMIT APPROVAL NO UP2004-7

Ms. Duncan presented item 1, Environmental Impact Assessment No. EA2004-8, 'S' Zone Approval No. SZ2004-3, Use Permit Approval No. UP2004-7. Ms. Duncan noted that veterinary clinics, hospitals and kennels are allowed uses within this area. This facility will be located at the old Holland Pacific Hitch building. The applicant is requesting demolition of the 58,000 square foot building on site and to construct the 47,990 square foot building that will be an animal facility with rooms for medical/surgical, animal daycare, boarding, a pet store, classrooms, ancillary retail offices and a behavioral and social evaluations area. Site improvements include landscaping in two phases. Upon building it will include 52 new trees, an open grass area for a dog park, various plants and shrubs and vinyl clad chain link fencing around the dog park perimeter and area site. Parking will take place along perimeter and the rear of the project site as well as in the front of the building. The lighting proposed is wall mounted pictures as well as poles throughout the site. The applicant is requesting removal of 13 protected trees to make room for the development. The city standards do not address parking requirements for animal facilities; however, the commission can approve parking requirements. The applicant submitted a parking study that indicated 140 parking spaces that should be plenty of parking. Only 105 are required so this should be ample parking. The applicant is requesting 19 compact spaces at the rear of the building for staff only. There would be a 23,000 square foot dog park in front of the facility for members with an area for small and large dogs. The primary issues addressed were traffic impacts, biological resources and hazardous materials. The applicant submitted a traffic impact assessment that the transportation planning staff reviewed and it was determined that the increased parking on So. Milpitas toward Montague would create an impact and an impact of \$53,238 was determined. However, the applicant is requesting deferral of this condition and requesting additional time to verify parking. The project site includes 2.2 acres of open area that has not been developed. A burrowing owl study was conducted it was determined that no owls or evidence of owls are present. However, there is a condition of approval included that the applicant needs to submit another survey for burrowing owls if development does not commence by the end of the year. Due to the variety of ages and the possible concentration of children, the applicant submitted a risk assessment, which the Fire Department reviewed. It was determined that two facilities within a quarter that have hazardous materials. Therefore the conditions of approval required the applicant to submit an emergency action plan. Staffs' recommendation is to adopt the initial study and mitigated negative declaration, approve the S Zone approval and use permit.

Commissioner Giordano had a question regarding the removal of 21 trees on site, 13 of which are protected. She asked if the 21 trees would be removed with 88 new trees being planted. Ms. Duncan stated that upon build out there would be a total of 92 trees on site. Commissioner Giordano had questions regarding the number of parking spaces. Ms. Duncan noted that the project plans indicate 43 spaces provided including compact spaces for staff, making a total of 54 spaces for staff. Public parking totals 86. Project site will have a total of 140 spaces. Staff noted that the peak demand is 105, therefore there is plenty of parking on site. Commissioner Giordano asked if the 34 overflow spaces are on site. Ms. Duncan said yes.

Christine Beninger, President of the Humane Society of the Silicon Valley. She stated that her organization is thrilled to locate in Milpitas. They looked for locations for three years and wanted a place that would embrace them. They have been serving the community for 75 years and have 30,000 members making them a long serving and well supported organization. Their plans are for a state of the art animal facility that will break the paradigm of what an animal facility is about. They have hired a project manager and architect. Their goal is to raise the bar on how animal facilities interact with the community and how they serve the community and animals.

Scott Marium, Project Manager stated that this is a unique project. He has worked with the architect on the humane society project in San Diego. He noted that this project does break the paradigm of how animals are held and creates a habitat similar to home. This will be unique to the Milpitas community.. He commended the city for being very thorough and they have worked through a number of issues. He noted that construction costs are skyrocketing including the cost of structural steel, which has risen 50%, and plywood has tripled from a year ago. This is a challenge for a nonprofit organization having to raise funds. They are asking that the fees mentioned by staff should be deferred until they can show the actual impact. They may consider going to the City Council for a fee reduction. He noted that this would be a very nice facility for the community.

George Meyers, Architect, noted the positive experience working with city staff and that the Planning, Building and Engineering Departments were very helpful. He noted that he has worked on similar projects from across the country. This will be a multipurpose center that celebrates all the different aspects of caring for animals, as well as an educational facility for children and other groups. There will be classrooms that can be used after hours used by the community. There will be a major adoption facility that would have dog and cat habitats and no cages in order to better socialize the animals. There will be a doggy daycare facility with a separate entrance and boarding and veterinary facilities. Medical procedures can be viewed in the classroom. There is also a café. The exterior of the building attempts to be a warm through the use of stone, yet playful with a combination of colored metal and animal figurines and embossed animal figurine lighting. The campus has 140 parking spaces, more than has been provided anywhere across the country. They are proposing the use of decomposed granite for overflow parking, which will aesthetically look a lot better.

Bob Fukushima, landscape architect, noted that the overall landscape concept was to provide an area for the dogs to interface and exercise and an area for programs outside of the turf area. The landscape is designed for low water use and is drought tolerant. This is an optimal site and there will be an area for all weather use that has artificial turf. The back of the site is designed for a garden feel

Motion to close the public hearing.

Sandhu/Mohsin

AYES: 6

NOES: 0

Commissioner Galang asked why they chose Milpitas and the site on Ames. Ms. Beninger noted that it took three years to find an appropriate site. The plans they have fit the Milpitas community as Milpitas embraces family and establishes businesses and housing that supports the family and family structure. This is consistent with what her organization is doing and this makes Milpitas very appealing. Given the type of use for an animal facility, they are relegated to heavy industrial zones. There are very few industrial areas where you want to bring people and they were thrilled with the corridor along Ames as this is a beautiful industrial area where they would feel comfortable bringing their customers and their staff would feel comfortable there as well.

Commissioner Galang asked about the dog park. Ms. Beninger noted that it would be for members only in order to create safety. In order to be a member there will be a small fee, but the main criteria is that the dogs must have had shots, been spayed or neutered and temperament tested.

Commissioner Sandhu asked when the facility would open. Ms. Beninger stated that their goal is two years, however, they need to raise more money. Commissioner Sandhu asked if there is a concern about animal odor. Ms. Beninger noted that everything is enclosed. George Meyers almost guaranteed that there would be no odor. Ms. Beninger stated that there would be three types of areas; one for animals that are either being prepared or are available for adoption and animals that people will bring in for day care or boarding, and the medical center or use of the dog park. There will be a total of approximately 40 to 60 dogs and 40 to 80 cats on sites, with about 10 to 50 animals in and out on a daily basis. In terms of noise, if a dog that exhibits extended barking, it would be taken inside. The animals will always be under supervision. There will also be a sophisticated system of sound walls inside. Ms. Beninger noted that their plans are for dogs, cats and rabbits to be on site and available for adoption. They do not have plans for exotics, farm animals or smaller animals. Currently, they do take everything in that is brought to them, then they get other specialized facilities to obtain these types of animals. George Meyers noted that there is a 12 X 9 room that is labeled wildlife. This room is for occasions where someone might come in with a bird that fell out of tree so this is a holding area until a wildlife rescue group can be notified and the animal can be picked up. Ms. Beninger noted that this is a great service for the community if they need to urgently drop off wild life and these animals are usually picked up by other organizations within 24 hours.

Vice Chair Garcia stated that he applauds this project and is happy to have it locating Milpitas. He has questions regarding the handling of animal waste. Ms. Beninger noted there are procedures for this disposal. There will be euthanasia on site when needed. They offer a service for the public who would like to put their animal down and they can be there with their animal in a home like environment during this process. Once this facility is built, they will no longer be handling animal control contracts, which will reduce the number of animals being euthanized at their site. There will be a few that are euthanized due to temperament and illness. The animals are picked up out of a cooler. Mr. Meyers noted that the cooler is placed at the rear of the building and with secure access. In terms of waste, Ms. Beninger stated that waste in the adoption and holding kennels is processed much the same way human waste. It is picked up and flushed in a toilet, and the urine is mopped up then the floors are cleaned with a disinfectant. In the dog park, the owners will be required to pick up after their dog. They will also have staff and volunteers who will make passes through the park to deal with waste.

Commissioner Garcia asked about their proximity to hazardous materials with the two sites nearby. Ms. Beninger stated that they would have a plan for housing animals inside the building. One advantage in the new facility is that they can move all animals inside, and feed them indoors for up to a week. Commissioner Garcia noted that there was a business nearby that had a record of materials in the dirt called Duncan Great Western Chemical Company, which is still under mitigation measures. He asked if the city has any legal responsibility. Mr. Lindsay said no and stated that there is underground water contamination, however, the environmental studies concluded that the surface is clean for animals and humans. Commissioner Garcia asked if there are plans to put directional signs on Milpitas Blvd. or Yosemite. Mr. Lindsay noted that Caltrans has certain types of signage for public facilities. Currently the city sign ordinance prohibits this, however Caltrans standard signs are exempt. He is not sure if Caltrans might have a standard sign that could be used.

Commissioner Sandhu asked if there would be a dog training facility. Ms. Beninger said, but not for police dog training. The training would be for those who have adopted animals and other members of the public for fly ball and agility training.

Commissioner Galang asked about if there is a veterinary doctor present on a daily basis. Ms. Beninger said there would be three veterinarians minimum on staff full time working in the hospital as well as the spay/neuter clinic. Commissioner Galang asked if someone could leave a dog over night. Ms. Beninger said yes.

Motion to approve Environmental Impact Assessment No. EA2004-8, 'S' Zone Approval No. SZ2004-3, Use Permit Approval No. UP2004-7.

M/S: Garcia/Galang

AYES: 6

NOES: 0

There being no further business, the meeting was adjourned at 8:37 p.m. to the next special meeting scheduled on November 17, 2004.

X.
ADJOURNMENT

Respectfully Submitted,

James Lindsey
Acting Planning Manager

Holly Cuciz
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

November 17, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Faubion, Heyden, Lindsay, McNeely, Rodriguez, King, and Weisgerber

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
October 27, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of October 27, 2004.

There were no changes from staff.

Motion to approve the minutes.

M/S: Chair Lalwani/ Sandhu

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Mike McNeely, City Engineer, introduced Jaime Rodriguez, Engineering's new principal transportation planner in the traffic/engineering section. Jaime comes from the City of San Jose and brings a great deal of experience. He also introduced Steve Fitzsimons, traffic engineer, who is available for questions on the Elmwood project.

Vice Chair Garcia and Commissioner Mohsin congratulated Commissioner Giordano on her election to City Council.

Commissioner Giordano announced that tonight is her last meeting and noted that she served seven years on the Planning Commission and enjoyed working with staff and fellow commissioners and will look forward to work with them in a different capacity. She requested that the Planning Commission adjourn in honor of Vice Mayor Barbara Lee, who passed away last week.

Commissioner Mohsin announced that Neil MacKenzie, Sunnyhills neighborhood President, passed away and will be sorely missed.

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda. There were no commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Sandhu/ Mohsin

AYES: 6

NOES: 0

VIII.
CONSENT CALENDAR
Consent Item No. 3

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Lalwani opened the public hearing on Consent Item No. 3.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item No. 3.

M/S: Sandhu/ Giordano

AYES: 6

NOES: 0

Motion to approve Consent Item No. 3 on the consent calendar.

***3 USE PERMIT NOS. UP2004-29 AND UP2004-30:** A request for two temporary, offsite tract signs on two undeveloped parcels at the northwest corner of N. Abel St. and Milpitas Blvd. (APN: 028-17-001) and the northeast corner of S. Main St. and Curtis Ave. (APN: 086-25-020) for the Parc Place residential project currently under construction. Applicant: Sign Tech. Project Planner: Staci Pereira, (408) 586-3278. (PJ Nos. 2400 and 2401) (*Recommendation: Approval with Conditions*)

M/S: Sandhu/ Giordano

AYES: 6

NOES: 0

IX.
PUBLIC HEARING

Mr. Lindsay Lindsay, Acting Planning Manager, presented General and Specific Plan Amendment (GP2003-2), amendment to the zoning map (ZC2003-2), Environmental Impact Report (EA2003-7), Vesting Major Tentative Map (MA2003-4), Planned Unit Development No. PD2003-1, Site and Architecture Review (SZ2003-6), and Use Permit No. UP2003-26. A request for land use changes to facilitate development of approximately 35 acres of vacant land near the Elmwood Correctional Facility with 683 new residential units and 7 acres of public park space.

In addition, Mr. Lindsay brought the Commission's attention a memo from staff dated 11/17/04 recommending the following revised changes to the special conditions noted in the staff report:

5. **MM – Traffic:** Prior to the issuance of any building permits (except for the model homes) for the residential units, traffic impact mitigation fees totaling \$1,865,000 shall be submitted to the City. The breakdown of mitigation fees are as provided below: (P, Mitigation Measure TR-4, TR-5 & TR-6)
 - a. Montague Expressway Corridor Fee - \$465,000
 - b. Calaveras Boulevard Corridor Fee - \$1,000,000
 - c. Great Mall Parkway Corridor Fee - \$400,000

6. ~~MM – Traffic:~~ Prior to any building permit issuance for the project, the applicant shall construct the following improvements at the north leg of the Elmwood Road/Great Mall Parkway/I-880 ramps intersection: (P, Mitigation Measure TR-7)
 - ~~d. North (Southbound) approach: One right turn lane, one shared through left turn lane, and one left turn lane;~~
 - ~~e. North Receiving Lane: One northbound lane and;~~
 - ~~f. All signal modifications associated with these improvements shall be completed.~~

- 45 **Community Facilities District:** ~~Prior to issuance of any building permit~~ As provided for in the Disposition and Development Agreement between KB Home South Bay and the Redevelopment Agency, all the developer shall submitted petitions to annex into the CFD ~~shall be finalized~~. The developer/property owner shall comply with all rules, regulations, policies, and practices established by the City with respect to CFD including, without limitation, requirements for notices and disclosure to future owners or residents. (E)

84. **Community Facilities District:** ~~Prior to any final map approval~~ As provided for in the Disposition and Development Agreement between KB Home South Bay and the Redevelopment Agency: (E)
 - a. The developer shall submit an executed petition to annex into and establish, with respect to the property, the special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services. ~~No final map will be approved without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes.~~ The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents.

77. **Bonding:** Prior to any final map approval, the developer shall bond for the construction of Abel Street as provided for in the Disposition and Development Agreement between KB Home South Bay and the Redevelopment Agency (from Great Mall Parkway to Weller Lane) including signage and striping, street lights, bus stops, streetscape, cross walks, raised landscaped median and Penitencia Creek's levee landscaping improvements from Great Mall Parkway to the northerly project boundary ~~per design plans for Abel Street~~. These improvements are currently under design by the City. City will deliver construction plans to the developer for the construction of these improvements, except for the roadway and driveway connections to Abel Street, which shall be designed consistent with the Abel Street Improvements and constructed by the developer. (E)

78. **MM – Hydrology, Public Improvements:** Prior to any final map approval, the developer shall obtain design approval and bond for the construction of the following public improvements: (E, Mitigation Measure HYD-5, HYD-6, UTL-1, and UTL-3)

- a. Public streets A, B, and C, including signage and striping, street lights, streetscape, adequate lighting at streets and driveway intersections with Abel Street and Great Mall Parkway.
- b. Bridge and maintenance access improvements over and along Lower Penitencia Creek.
- c. Public utilities including, sewer, water, storm drain and recycle water mains and services, fire hydrants, undergrounding overhead utilities and one new storm drain outfall connection to Lower Penitencia Creek from the west near the existing northerly bridge over Penitencia Creek.
- d. Parks improvements and amenities including, Hetch Hetchy linear park from highway I880 to approximately 210 feet easterly of S. Main Street as shown on the project's approved Plan Unit Development Plans (PUD).
- e. A new 21-inch sanitary sewer main on Curtis Avenue from S. Main Street to Abel Street and reconstruction and upsizing of the existing 15-inch sanitary sewer main to 21-inch on Abel Street from Curtis Avenue to the existing 30-inch sanitary sewer line North of Hetch Hetchy right of way.
- f. Traffic signal installation at the intersection of Abel and proposed B Street and traffic signal modification at the intersection of the Great Mall Parkway and proposed A Street including modifications to this intersection to provide an additional southbound left-turn lane into Great Mall Parkway.
- g. Penitencia Creek's levee improvements, including landscaping, raising the existing flood wall and Elmwood access road for flood control protection per approved floodplain study.
- h. ~~A public street connecting proposed A Street to Abbott Avenue, subject to design approval by the City Engineer.~~
- i. Relocate the following as deemed necessary by the City Engineer: the existing 30" sanitary sewer line to proposed C street and ~~if necessary relocate~~ the existing recycle water line within proposed C street to provide adequate clearance for the construction of the proposed wall along this street.

Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings in AutoCAD format upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.

Commissioner Giordano asked what is the park dedication fee for a project that is not within the Midtown area. Mr. Lindsay responded that it is 5 acres per 1,000 people. Commissioner Giordano asked what formula did staff use? Mr. Lindsay explained that the formula uses the average population per household for different housing unit types based on census data and demographic data from the State Department of Finance. Each of the three unit types have a different population ratio. Single family detached units have a higher population ratio and condo units have a lower ratio.

Commissioner Giordano expressed concerned because she only saw the net result and didn't see how staff came up with the calculation. Mr. Lindsay confirmed that for the condos, the lowest persons per household is 2.69, the highest goes to 3.7 and that number is used to estimate the population. Commissioner Giordano said that the number of people per household is a big concern for the city because the data does not seem correct.

Commissioner Giordano noted that the PRCRC commissioners wanted to see a bathroom installed in the project and she is not happy with the applicant's response that about doing a feasibility study. At the previous worksession, she questioned that she didn't like the location of the tot lot park and felt that it should be more centrally located. She is in favor of having the seven elm trees preserved and negotiate the park amenities that can't be there due to liability and she agrees with the PRCRC and work around their recommendations.

Commissioner Giordano talked about a letter from the department of transportation and wants to know what the issues are. Mr. Lindsay noted that the CALTRANS comment letter did not contain any surprises, the only comments that staff is concerned about is from the city of San Jose regarding odors and it has been reviewed and discussed.

Commissioner Mohsin noted that she would like to see the seven trees preserved too as well as the bathroom installed in the park. She is concerned about the overflow of parking and the ratio of residents per household. She felt that the parking problem should be addressed.

Commissioner Galang is concerned about traffic and said that five years from now, all houses will be occupied and residents will be using Abel and Abbott crossing into Calaveras. Mr. Lindsay noted that the idea about connecting Abbott street came rather recently and has to be studied because it is creating a new north south collector street that will change the traffic distribution in the area.

Commissioner Galang asked staff to clarify their recommendations for language in the CC & R's. Mr. Lindsay explained that with the homeowners association, you have the ability to impose conditions on how parking is used in a project. With high density in-fill developments, the garage is absolutely necessary for parking, and there is a way that restrictions could be placed on each property. The homeowners have to agree to the conditions before purchasing the property. It is a great way for them to agree to using the garage as parking. He also noted that the CC & R's are not regulated by the City but by the HOA.

Vice Chair Garcia noted that in the MOU between the county and the city and KB homes, there is a term in here that he is not familiar with called silent second mortgages and asked if staff could explain. Mr. Lindsay deferred the question to the Assistant City Manager Blair King.

Mr. King noted that in Parcel C, approximately 84 units would be part of the silent second which is a second loan provided to the homeowner. The amount would be \$50,000 and the term of the loan would be 4 years that loan would earn 1% above the local agency's investment fund rate. Right now, we don't earn that much on our interest, so it would be about 4% annually. Beginning in the fifth year, it would begin to decline by 20%. Staff felt that there are people that have good jobs that meet the income but don't have the ability to put the down payment in place.

Commissioner Sandhu asked if there have been any considerations for a small commercial such as a 7-11 or laundry mat. Mr. Lindsay noted that a commercial development is not part of the proposal and the City is looking to create that type of activity on Main Street, and would like the residents to utilize the mixed use on main street.

Chair Lalwani is concerned about the traffic congestion on Abel Street. Mr. Lindsay noted that the plan is to close Carlo street and additional improvements will be made so that traffic can flow better on Calaveras Boulevard.

Chair Lalwani asked if there are any future plans to widen Abel street and asked how are people able to forecast future traffic concerns. Mr. Lindsay replied that Abel is constrained by businesses on the east side and penetencia creek on the west side. He noted that traffic forecasting is done by experts who use computer models, studies, and look at the type of housing. Staff is confident that the traffic impact analysis is accurate and other agencies reviewed and felt it was adequate as well.

Chair Lalwani asked if Calaveras Blvd. would be widened in the future. Mr. Lindsay replied that it is very congested and if there will be any widening, the initial effort will occur in Fremont to connect I-680 to I-880.

Chair Lalwani introduced the applicant.

Ray Panek, Vice President of KB homes and Denise Cunningham made a presentation of the project. They noted that KB homes appreciates the significance of the elm grove and will work in conjunction with the city to develop an appropriate mitigation plan and will look at adding some tree planting that provided pedestrian friendly paseos.

Commissioner Giordano mentioned her concerns about the widths of the street and being able to get public safety access back there.

Fire Chief Bill Weisgerber explained that the street configuration is narrower and the City had to purchase new equipment to accommodate it.

Commissioner Giordano noted that she would like to see the planning of the amenities done appropriately and would like to see a different configuration of the tot lot.

Mr. Panek stated that he felt KB Home is providing 100% more open space than the requirement. All of the facilities in the linear park are going to be installed and that is not a requirements. KB home worked through 30 illustrations on the town house side and is trying to balance all of that within the parameters of the project and looking at ways to improve it.

Commissioner Giordano wants to see the elm trees preserved and felt that the quality of life needs to be preserved. She is looking for relocation of the park space. Mr. Panek noted that if the commission wants the park centrally located, that that is going to require that approximately 14 units be removed.

Commissioner Sandhu asked a follow-up question regarding the fire equipment that was purchased and asked if other cities would be able to use the equipment. Mr. Weisgerber replied that staff worked in the planning stages so that the arterial streets would accommodate supporting equipment so that the ladder truck could be able to come to the scene of the fire immediately and support equipment to support the operation.

Commissioner Sandhu asked if staff would be able to get help from the outside. Mr. Weisgerber responded, "yes", and that the concept is for the first units to be able to get to the address. Even in the best circumstances you would not be able to, nor tactically want to, get the all equipment in the street in front of the address that is being responded to.

Commissioner Sandhu asked who will maintain the parks and Ms. Cunningham noted that the city will be maintaining the park and the HOA will be maintaining the private amenities in the facility.

In regards to the location of the park, Vice Chair Garcia said that he would like to hear from the residents and see what they think.

Commissioner Galang asked how many elm trees will be located along Able street. Mr. Lindsay showed the Commission an exhibit and explained that there are 55 elm trees within the elm grove. The majority grouping of the seven trees that the PRCRC recommended be saved are right along Abel Street where the new emergency vehicle access would be located. The fire trucks would need access there and the trees pose a potential safety risk for the sidewalk along Abel Street. Mr. Lindsay pointed out that the playground equipment would not be affected, however it does have significant impacts on the sidewalk.

Commissioner Galang if there are any alternatives for keeping the elm trees. Mr. Lindsay replied that another design would be possible, however it would be very unlikely because it would result in a substantial loss of units.

Chair Lalwani opened the public hearing:

Dan Sullivan, Resident on Sylvia Avenue, representing Palmer and Corning Avenue, is concerned about parking issue more than traffic and recommends that a “No Parking” sign be posted and only neighborhood cars can park on the streets. He also is concerned about the new homes being able to see into his backyard and would like to see a fence or some large trees so that people are not staring down in their backyards. He is also concerned that there are no parks in the area and that the proposed park is not adequate.

Mary Meechum, 275 Corning Avenue, has lived in Milpitas for 29 years and is concerned about the traffic that backs up to Corning Avenue during rush hour. She felt that the area is not big enough to add more firemen, policeman and schools and that there is too much overcrowding.

Rick who lives on Corning Avenue, agrees with Mr. Sullivan that there are no parks in the area and the kids have no place to play. He thought that the linear park is nice but it is a not a real park. His other concern is elevating the land on the new development to prevent flooding and wants to know the impact on what the area would be or if there would there be any improvements in the storm drain.

Jean Makart, Corning Avenue, is concerned with schools and parks. She noted that the census bureau data stated that 43% of households currently have children between the ages of 5 to 18 and that would be an additional 400 more children.

Close Public Hearing

Motion to close the public hearing.

M/S: Sandhu/ Giordano

AYES: 6

NOES: 0

Mr. Lindsay summarized the residents concerns for Mike McNeely, City Engineer to respond to; would a permit parking program be available through the city if problems were to occur within the existing residential neighborhood and the flooding impacts within the existing residential neighborhood.

Mr. McNeely responded that drainage direction must be maintained and there will be connection to the storm drains, however it will not adversely affect the drainage and the applicant will submit documentation that staff will review. In regards to parking permits, the City has done that within areas around the high school, if the Council were to give staff direction it could be considered permit parking for residents only.

Mr. Lindsay addressed the issues of the park acreage / population ratio and whether that should take into account the whole neighborhood. Mr. Lindsay displayed a map from the General Plan that showed standard radiuses around existing and the proposed parks. The map showed that without the proposed parks, the Sylvia / Palmer neighborhood has no parks within the standard radiuses. Staff does agree that the neighborhood is underserved with existing city parks. The City cannot require a developer to compensate for an existing deficiency, so the request to look at the population of the entire area is a very good question for the City and would require additional city funds. The responsibility of the developer for this project is to meet the minimum General Plan requirement for the population they are creating, which the developer is already exceeding.

Mr. Lindsay asked the applicant to show the exhibit about the maximum height of the buildings to address the privacy issue. Ms. Cunningham showed the different designs of the buildings and said the homes would be about 50 feet away from the backyards of the homes on Sylvia Avenue.

Vice Chair Garcia expressed concerned about the height of the building being a maximum of 45 feet, which are several feet above the maximum allowed. He asked Mr. Lindsay to address that. Mr. Lindsay replied that the R3 district has been in the City for many years and was not re-evaluated in the Midtown Specific Plan which is more reflective of how in-fill development is designed.

Vice Chair Garcia stated that a new 18 foot wall that would separate this project from the Elmwood facility and KB is awfully high and asked the developer to clarify.

Mr. Panek stated that KB built an 18 foot tall wall in Newark and it is very tall and very impressive and really hard to articulate and landscape it. He stated that there is a condition of approval to help landscape it. Should the wall be shorter, KB could support that. If much shorter than 14 feet, could not support that.

Mr. Lindsay noted that the City is supporting a wall and knew there would be a need for substantial screening.

Chair Lalwani asked if the wall is a visual restriction because of the prison.

Mr. Lindsay noted that is one of the reasons. The other reason is to provide a physical barrier. Staff would like it to be visually pleasing for future homeowners so that when they look out their windows, they will see a nice park not a jail.

Vice Chair Garcia noted that he is in favor of taking down the elms. Falling tree limbs are pretty dangerous and if there are trees that are not healthy, they should come down. Traditionally, there are large blocks of parks around the neighborhoods, and there is no question that the neighborhood does not have any parks. Having a soccer field type of park, it is a city responsibility not a developer responsibility. He likes that the project is tied to Main street, which will be a huge thing for all of the people in the area. He liked the "string approach" to the new park and felt that it does a good job. He did think that Commissioner Giordano made a good point about the central community center in the single family area and should be evaluated.

Chair Lalwani asked what is the possibility of having a park in the auto mall area and can it be done. Mr. Lindsay noted that the County of Santa Clara owns the property and will continue to own the property. It is their intention to lease to the commercial uses that are being proposed.

Commissioner Giordano requested that the project not be conditioned to have more mature landscaping to mitigate the wall and asked about the size of the trees. She doesn't want the project to take 10 or 20 years for the vegetation to screen and doesn't want it to fall through the tracks. Mr. Panek explained that there is a condition of approval that talks about putting recesses in the wall so that you have landscaping to help mitigate the linear plane. The condition requires that all minimum tree planting be a 24- inch box. If the Commission requests, the applicant could change the minimum of the tree to a 36- inch box to be planted on the neighbor side of the project.

Tony Aguilar, 284 Sylvia Avenue, commented that she has big trees in the back of her house, not on her property and asked if they will be left there or will they be taken out. Mr. Panek replied that the trees on the project site will be removed and will not be removing trees that are on private property.

Commissioner Mohsin asked if the parking issue has been addressed and asked how is KB homes going to accommodate the number of occupants. Mr. Lindsay noted that the City does have parking requirements and the applicant is meeting those requirements. The condominium portion is slightly exceeding the required parking. The requirement is based on the number of bedrooms, so for a one bedroom unit, you need 1½ parking spaces and for a 2 bedroom unit, you need 2 parking spaces. He explained that HOA's have private streets. The City is experiencing neighborhoods where homes are rented out to multiple people and have multiple cars taking up a lot of parking on the public street. Staff does not believe that the same phenomenon will exist in the multi-family higher density homes because the units cannot be modified for garage conversions or building additions. The HOA is a deterrent, people who buy into the project have to agree to abide by the CC & R's which are enforced by the HOA. Buying into an HOA is a conscious choice the homeowner will make.

Chair Lalwani asked Mr. Lindsay to explain the way the motion will be handled.

Mr. Lindsay clarified that the motion can be handled in different ways. The first action staff is asking the Commission to take is to adopt a resolution recommending certification of the environmental impact report. The second action is the resolution on the General Plan and Specific Plan amendment. That action is specifically related to the zoning boundaries of the parks and open space areas, and if the Commission desires that it be modified, then staff can modify the resolution and carry it to the Council. This resolution needs to have four approval votes. The third item is the zoning amendment, which is a replica of the General Plan amendment and the fourth item is the development application, which the Commission is used to dealing with. A straw vote can be taken before the Commission makes a motion.

Attorney Kit Faubion asked the Commission to look at the draft resolution on the General Plan and Specific Plan amendment and pointed out the attached diagram that shows the areas proposed for revision. She explained that the Commission, upon deliberation, may come to a recommendation of should there be more park area or not, or should it be in a different location than what is shown on the document. Staff needs to know what the change would be because the recommendation is going forward to Council. Attorney Faubion made it clear that this is an example only and suggested the Commission take a straw vote before a motion is taken.

The Commission made a straw vote on the following items:

- 1) The resolution be modified to reflect that the public park proposed along Abel Street be relocated to a central part of Parcel D and be doubled in size.

Straw vote results:

AYES: 6

NOES: 0

- 2) Retention of a portion of the elm grove and the potential park redesign of the park to reflect the PRCRC recommendation. Mr. Lindsay noted that retaining the elm trees has two impacts: It reduces the amount of usable park space and there is a possibility of impacts on the southern condominium buildings. Mr. Panek stated for the record that if there are going to be any elm trees that are required to be saved, KB homes will be seeking a complete release from liability from the City because of information that they are a hazard and KB Home does not want to be in the legal chain.

Straw vote results:

AYES: 4

NOES: 2

- 3) With the creation of the centrally located public park that a public restroom be constructed. Mr. King commented that staff asked that KB site the location and install utilities in the spot. From an operational point of view, restrooms have a problem with safety. Not all restrooms have bathrooms – Ben Rogers Park, Hillcrest and Curtis Avenue parks. We want to have a chance for the area to mature, see what happens with foot traffic there, and see how safe it is to locate a restroom there.

Straw vote results:

AYES: 3

NOES: 3

- 4) Require that the landscape screening (along the spine road that runs parallel to Sylvia Avenue) be of material that is quick growing and is appropriate to screen.

Straw vote results:

AYES: 6

NOES: 0

Vice Chair Garcia recommended that staff be tasked to find a park area that would suit all of the residents within Sylvia and Corning Avenue and doesn't think conditioning KB to develop a larger park would be appropriate. Mr. King commented that staff has had discussions with possibly conditioning KB homes to contribute towards the development of the Cracolice site for more park space. Because of the economics of the project, there is a greater ability for the redevelopment agency to participate in that condition imposed upon KB outside of the boundaries of the project. Inside the boundaries of the project, staff is limited in terms of what might happen to facilitate the developer in meeting these goals.

Break

The Commission took a five minute break and returned to the Council Chambers at 10:18 p.m.

Motion to adopt resolution no. 496 recommending the City Council certify the EIR.

M/S: Sandhu/ Giordano

AYES: 6

NOES: 0

Motion to adopt resolution no. 497 recommending that the City Council approve the General and Specific Plan amendments with the following changes: a) to relocate the Abel Street park to a central location on Parcel D and double its size and b) redesign the area around the elm park to retain the 7 elm trees as recommended by the PRCRC.

M/S: Sandhu/ Giordano

AYES: 4 (Sandhu, Giordano, Galang, Mohsin)

NOES: 2 (Garcia and Lalwani)

Motion to adopt Ord. No. 38.765 rezoning portions of the Elmwood Development project with the following changes: a) relocate Able Street park to the central location on Parcel D and double its size and b) redesign the area around the elm park to retain the 7 elm trees as recommended by the PRCRC and make the appropriate zoning designation changes.

M/S: Sandhu/Giordano

AYES: 4 (Sandhu, Giordano, Galang, Mohsin)

NOES: 2 (Garcia and Lalwani)

Motion to recommend the City Council approve Vesting Tentative Map No. MA2003-4, Planned Unit Development No. PD2003-1, "S" Zone Application No. SZ2003-6, and Use Permit No. UP2003-26 based on the findings in the staff report and the modified conditions presented this evening in a memo from staff, and the following added conditions: a) enhance landscaping on the north side of parcel d to provide adequate screening along the northern subdivision boundary and b) to reflect the park relocation and elm park redesign identified in the general plan resolution.

M/S: Sandhu/ Giordano

AYES: 6

NOES: 0

Vice Chair Garcia asked if staff would look into finding a location for a park for the Sylvia / Palmer neighborhood area. Mr. Lindsay felt it would be more appropriate for the Commission to forward a recommendation to Council and have Council provide direction to staff.

Motion to recommend to City council to provide staff direction to locate a park for the Sylva/Corning neighborhood.

M/S: Garcia/Giordano

AYES: 6

NOES: 0

**X.
ADJOURNMENT**

The meeting was adjourned in memory of Neil MacKenzie and Barbara Lee at 10:23 p.m. to the next regular meeting of December 8, 2004.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Veronica Rodriguez
Recording Secretary

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

December 8, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Lalwani, Galang, Garcia, Mohsin and Sandhu
Absent: None
Staff: Anaya, Carrington, Heyden, Lindsay and Rodriguez

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
November 17, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of November 17, 2004.

Mr. Lindsay provided the Commission page 13 of the minutes and added the following language:

Vice Chair Garcia asked if staff would look into finding a location for a park for the Sylvia / Palmer neighborhood area. Mr. Lindsay felt it would be more appropriate for the Commission to forward a recommendation to Council and have Council provide direction to staff.

Motion to recommend to City Council to provide staff direction to locate a park for the Sylvia / Palmer neighborhood.

M/S: Garcia/Giordano

AYES: 6

NOES: 0

Motion to approve the minutes.

M/S: Sandhu/Garcia

AYES: 5

NOES: 0

**V.
ANNOUNCEMENTS**

Mr. Lindsay noted that the City Calendar was published recently and the meeting schedule for the Planning Commission was inaccurately presented. The meetings are not on Thursdays but are Wednesdays. In response to a concern one of the commissioners had regarding posting their calendar on the internet, Mr. Lindsay noted that the City Clerks office is working on the implementation process of the open government ordinance with the Information Services department and the City does not have a procedure yet for the calendar postings. City Attorney Kit Faubion will be available after the meeting for any questions.

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda.
There were no commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

Mr. Lindsay recommended that Item No. 8 –Use permit No. UP2004-22 be removed from the consent calendar because staff has received public comment and understands that there will be citizens that want to speak out on the item. For this reason, staff is recommending that Item No. 8 be considered after Item No. 1.

Motion to approve the agenda as amended.

M/S: Sandhu/ Garcia

AYES: 5

NOES: 0

**VIII.
CONSENT CALENDAR
Consent Item Nos. 4, 5, 6, 7,
9 and 10**

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that staff is recommending that No. 8 be removed from the consent calendar. He also brought to the Commission's attention a memo dated December 8, 2004 for Agenda Item No. 4 – Major Tentative Parcel Map No. MA2004-4 - modifying condition of approval nos. 1, 4, 5, 6, 8, 9, 11 and 12. He noted that the applicant is in concurrence with the modifications.

Vice Chair Garcia asked if the reduction of 102 units to 96 units causes any change to affordable housing units. Mr. Lindsay explained that Apton Plaza will retain the same unit count of 96 units and that the project received two separate approvals. The first approval was for 102 units and the second approval was for 96 units.

Chair Lalwani opened the public hearing on Consent Item Nos. 4, 5, 6 and 7.

There were no speakers from the audience.

Close Public Hearing

Motion to close the public hearing on Consent Item Nos. 4, 5, 6 and 7.

M/S: Galang/Mohsin

AYES: 5

NOES: 0

Motion to approve Consent Item Nos. 4, 5, 6, 7, 9 and 10.

M/S: Sandhu/Mohsin

AYES: 5

NOES: 0

- *4 MAJOR TENTATIVE PARCEL MAP NO. MA2004-4:** A request for a major tentative parcel map to convert a previously approved mixed use building to ninety-six (96) residential and one (1) commercial condominium units for the Apton Plaza project at 230 N. Main Street (APN's: 028-24-017 and -018), zoned "MXD" mixed use. Applicant: Apton Properties. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 3144) (Recommendation: Recommend to City Council Approval with Conditions)
- *5 "S" ZONE APPROVAL AMENDMENT NO. SA2004-103:** A request to construct a 768 square foot wood deck located at 1485 Country Club Drive (APN: 029-03-018), zoned "R1-H" Single Family Hillside. Applicant: Frank Houghton. Project Planner: Cindy Hom, (408) 586-3284. (Recommendation: No action required by the Planning Commission)
- *6 USE PERMIT AMENDMENT NO. UA2004-13:** A request to allow sales of all types of alcoholic beverages for King Crab Restaurant located at 269 W. Calaveras Boulevard (APN: 022-25-041), zoned "C2" General Commercial. Applicant: King Crab Restaurant. Project Planner: Cindy Hom, (408) 586-3284. (PJ# 2322) (Recommendation: Approval with Conditions)
- *7 USE PERMIT NO. UP2004-33:** A request for a delicatessen with no seats serving pre-packaged and prepared foods for take-out only at 300 Barber Court (APN: 086-01-043), zoned "C2" General Commercial. Applicant: Yushain Chang. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2404) (Recommendation: Approval with Conditions)
- *9 "S" ZONE AMENDMENT NO. SA2004-101:** A request by Kohl's Department Store to make exterior modifications such as a new entrance, loading dock and trash area, and landscaping at 1150 Great Mall Drive (APN: 086-24-055), zoned "C2" General Commercial. Applicant: Kohl's Department Store. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 3182) (Recommendation: Approval with Conditions)
- *10 "S" ZONE APPROVAL AMENDMENT NO. SA2004-112:** A request to have an outdoor display or for-sale products at the front of the Albertson's Supermarket, 25 North Milpitas Boulevard (APN: 028-22-132), zoned Town Center (TC). Applicant: Albertson's Inc. Project Planner: Troy Fujimoto, (408) 586-3287. (Recommendation: Approval with Conditions)

IX. PUBLIC HEARING

1. Use Permit Amendment Nos. UA2004-8 and UA2004-11 and an Addendum to EIA No. 749: Kohl's Department Store at 1100 South Main Street. Applicant: Kohl's.

Troy Fujimoto, Acting Associate Planner, presented Use Permit Amendment Nos. UA2004-8 and UA2004-11 and an Addendum to EIA No. 749 (UA2004-8 was continued from October 27, 2004). A request by Kohl's Department Store for a parking modification, related to adding 7,649 square foot of new floor area to the Great Mall and modification to existing conditions of approval related to an existing parking modification at 1100 South Main Street (APN: 086-24-055), zoned "C2" General Commercial. Mr. Fujimoto brought to the Commission's attention modifications to condition of approval Nos. 10, 12, and 13 which read as follows:

- 10. *Prior to occupancy of any square footage included in the re-use of 60,000 square feet of currently vacant gross leasable area, the mall shall submit to the City a signed, executed co-op work agreement between the VTA and the railroad (UPRR) and a work schedule shall be submitted to the City for the improvements included in the Permittee Dedication and Improvement Agreement, dated October 23, 2000, amended November 20, 2001. (E, new)*

12. *Prior to occupancy of any square footage included in the re-use of 60,000 square feet of currently vacant gross leasable area or by the dates indicated below, whichever occurs first, the mall shall complete the following improvements: (E, new)*

- a. *The Great Mall shall install a temporary "pork chop" island on the southwest corner of the Great Mall Outer Loop & McCandless Drive intersection, including minor marking/signage improvements approaching the intersection as deemed appropriate by the City Engineer. The pork chop island will create a "right turn only" movement for eastbound traffic in the curb lane approaching the Great Mall Outer Loop & McCandless Drive intersection. The appropriate signage and markings shall be provided to ensure that the "right turn only" movement continues to stop at the intersection. The temporary pork chop island shall consist of flexible base channelizers and roadway markings. The temporary pork chop and other minor marking/signage improvements shall be installed by Friday, December 10, 2004. The Great Mall shall maintain the temporary pork chop island until a permanent island is installed.*

The Great Mall shall design & construct a permanent pork chop island. The permanent pork chop island shall consist of 6-inch concrete curbing and concrete fill and be installed prior to the occupancy of the 60,000 square feet of Gross Leasable Area or June 1, 2005, whichever occurs first. Improvements plans shall be provided to the City Engineer for review/approval prior to construction.

- b. *The Great Mall shall remove the existing crosswalk on the west leg of Great Mall Outer Loop & McCandless Drive intersection as recommended by the Great Mall's consultant, Hexagon. For the duration of the temporary pork chop island installation discussed above, the Great Mall shall remove only the crosswalk markings. The existing concrete delineated by the markings to be removed may remain in place but the Great Mall shall install the appropriate markings/signage to guide pedestrians to other crossings. All work shall be completed prior to occupancy of the 60,000 square feet of gross leasable area or June 1, 2005, whichever occurs first.*
- c. *In lieu of a traffic signal at the intersection of Great Mall Outer Loop & McCandless Drive, the Great Mall shall furnish and install the following two items at the intersection of Great Mall Parkway & McCandless Drive:*
 1. *A video detection system consisting of four stationary cameras, a detection processor, and any other auxiliary equipment necessary to ensure the proper operation of the video detection system, and*
 2. *A traffic surveillance camera system consisting of one pan/tilt/zoom camera, two fiber optic transceivers and any other auxiliary equipment necessary to ensure the property operation of the traffic surveillance camera system.*

At the City's sole discretion, the City may install the traffic surveillance camera system prior to the installation of the video detection system to provide traffic surveillance capabilities at the intersection during the 2005 holiday season. Equipment provided by the City to install the traffic surveillance camera system and any installation costs, including minor construction and staff costs, shall be reimbursed by the Great Mall through the City's Private Job account (PJ2396-8).

The Great Mall shall design & construct the installation of the video detection system. Improvements plans shall be provided to the City Engineer for review/approval prior to construction. The video detection system shall be installed prior to the occupancy of the 60,000 square feet of gross leasable area or by June 1, 2005, whichever occurs first.

13. The Great Mall shall provide manned traffic control positioned at the Great Mall Outer Loop & McCandless Drive intersection during each Holiday Season per the following schedule: (E, new)

- a) The day after Thanksgiving: 12:00 PM – 5:00 PM*
- b) The two weekends prior to Christmas Day: 12:00 PM – 5:00 PM each Saturday and Sunday*
- c) The four weekdays prior to Christmas Day: 5:00 PM – 8:00 PM*
- d) The day after Christmas Day: 12:00 PM – 5:00 PM*

In addition, the intersection will be a 4-way stop.

Vice Chair Garcia asked staff to clarify the parking demand at the Great Mall. The parking appears to be maxed out and now Kohl's, which is now going to increase the parking space has less of a parking demand. Mr. Fujimoto explained that based on the previous shared parking reduction that the Mall has done over the past couple of years, by those numbers the Mall is at their capacity for parking. The applicant has justified a lower parking ratio for the Kohl's retail store by surveying existing Kohl's stores that have been opened for over a year. The survey has a true reading of parking generation, and with the holiday parking, the numbers came out with a lower holiday parking ratio than the Mall is currently parked at then the existing retail uses.

Vice Chair Garcia asked if Kohl's paid for the survey. Mr. Fujimoto said yes and the consultant who performed the survey did get direction from city staff and was submitted to city staff and was approved to city staff.

Vice Chair Garcia is amazed at the amount of cars surrounding the theater and Home Depot. He felt it doesn't make sense because even without Kohl's, he doesn't know where people will park. Mr. Fujimoto explained that when staff looks at parking, staff looks at the entire supply. So one location may be at or near capacity, there may be parking spaces available at other sides of the mall, which may require patrons to walk further across the Mall.

Vice Chair Garcia asked if there are any long-term plans for elevated parking. Mr. Fujimoto deferred the question to the applicant.

Chair Lalwani asked if staff has been checking the parking garage area near Media Play. Mr. Fujimoto explained that the Mall has been completing parking surveys for the City and have been compiling holiday and non-holiday surveys for the City. Staff has seen that the parking structure has not been at full capacity like other areas of the Mall so the Mall has been using changeable message signs and using personnel to direct cars to parking areas.

Commissioner Sandhu asked the location of the additional 7,649 square foot area that Kohl's will be enclosing. Mr. Fujimoto replied the Kohl's will be enclosing a mezzanine that will be constructed on the interior of the floor space to give a second level, and they are also enclosing a 4,500 square foot outdoor area that will add to the square footage. The area is currently Van's skate park.

Commissioner Mohsin asked how does the Mall direct traffic during Thanksgiving and Christmas holidays. Mr. Fujimoto replied that currently the Mall directs traffic the second Saturday of December through Christmas and directs cars to areas where there is excess parking.

Vice Chair Garcia asked for clarification on Item no. 3, page 8 that has to do with traffic signals and surveillance cameras. He asked if those items have been agreed to with the Mall. Mr. Fujimoto said yes and that the cameras need to be installed by June 1, 2005. Vice Chair Garcia noted that the year "2004" is a type and needs to be changed to reflect the year "2005".

Vice Chair Garcia asked how the temporary pork chop is working because it was a little bit clumsy when he drove through it. Mr. Fujimoto deferred the question to the applicant.

Mike McNeely, City Engineer, commented that staff has been looking at the pork chop and it is working well.

Commissioner Galang noted that he is not familiar with Kohl's department store and asked what type of merchandise will be sold. Mr. Fujimoto deferred the question to the applicant.

Chair Lalwani invited the applicant to the podium.

Brad Kempf, Development Director of the Mill's Corporation, explained that Kohl's is a glorified Mervyn's but a little more upscale.

Vasilis Papadato, Architect for Kohl's department stores, explained that Kohl's is a little below a Macy's and far above Mervyns. The merchandise is houseware items, all sorts of brand clothing, shoes, jewelry, a few limited houseware items, and small electric appliances.

Mr. Kempf added that the Mall is planning a \$15 million remodel that will begin in February along with a re-merchandising of the mall. At that time, Mills Corporation will meet with staff to create a new parking model for the new uses.

Vice Chair Garcia asked Mr. Kempf to look at traffic in general around the Mall and come up with a better solution. He felt that it is hard to navigate around Home Depot and it is difficult to drive through the outer ring road because of traffic congestion. His wife even got into an accident at the Great Mall and refuses to go there anymore.

Chair Lalwani opened the public hearing.

There were no speakers from the audience.

Close the Public Hearing

Motion to close the public hearing.

M/S: Sandhu/Galang

AYES: 5

NOES: 0

Vice Chair Garcia asked if there are significant changes to the revised special conditions Nos. 10, 12 and 13.

Mr. McNeely commented that for condition no. 12, in regard to the temporary pork chop versus the permanent pork chop, the pork chop seems to be working fine and staff is satisfied. Staff will also reflect the change to have it permanently installed by June 2005.

Motion to approve Use Permit Amendment Nos. UA2004-8 and UA2004-11 and an Addendum to EIA No. 749 with modified special conditions Nos. 10, 12 and 13.

M/S: Mohsin/Sandhu

AYES: 5

NOES: 0

2. USE PERMIT NO. UP2004-22: Red Rooster BBQ at 550 N. Abel Street.
Applicant: Francis Esposito.

Dennis Carrington, Senior Planner, presented Use Permit No. UP2004-22, a request for a new restaurant, Red Rooster BBQ, with 48 seats and includes a parking reduction of 3 spaces at 550 N. Abel Street. Mr. Carrington recommended approval with conditions.

Vice Chair Garcia asked if beer and wine would be sold and Mr. Carrington said yes.

Chair Lalwani asked if the applicant if they would like to make a presentation.

The applicant was unavailable.

Chair Lalwani opened the public hearing.

Ali, Resident behind proposed restaurant, commented that he is concerned about the restaurant. He has three children and he is concerned about the restaurant selling beer and wine and making a lot of noise behind his home. His neighbors are concerned as well however they were not able to attend the meeting. He asked the Commission not to approve the project.

Mr. Lindsay commented that staff is sensitive to the consumption of alcohol and the impacts that may occur. Staff felt that the use of alcohol with this facility will be incidental and does not expect this to become a bar or a noisy environment and does not expect large amounts of alcohol to be consumed on the property. The alcohol permit that is being requested is not all types of alcohol just beer and wine. Staff felt that the impacts to the neighborhood will be minimal, and the fears that have been stressed this evening will not be materialized. Staff felt the use is appropriate with the location.

Vice Chair Garcia asked how high is the fence behind the building.

Matthew Maduri, Property Owner of the shopping center and resident at 1557 Carmel Drive, San Jose, replied that the fence is approximately 8 ½ feet high and is located on the side and the back of the building.

Vice Chair Garcia asked if there are any visual impacts between the neighbors and the project location and Mr. Maduri said, “No”, because the property is two feet lower than the fence.

Vice Chair Garcia referenced a diagram and noted there is a ten-foot space on the south side of the building. He asked the property owner to clarify. Mr. Maduri said that is where the garbage enclosure is located.

Vice Chair Garcia asked if the Red Rooster BBQ would be the only uses of the garbage enclosure. Mr. Maduri said yes and that the other tenants have their own garbage bins in the back.

Vice Chair Garcia asked if the applicant is proposing karaoke in the restaurant. Mr. Lindsay replied that the applicant is not proposing any live entertainment and staff is not expecting any outdoor noisy activities.

Vice Chair Garcia is concerned because other restaurants have been interested in karaoke permits. Mr. Lindsay agreed with Vice Chair Garcia and said that if the applicant wanted to apply for a use permit amendment to include live entertainment being this close to a residential neighborhood would be a serious consideration.

Vice Chair Garcia asked how could a resident complain about garbage odors or kitchen odors. Mr. Carrington replied that if the applicant is in violation of a condition of approval, the code enforcement division would pursue it, and if need be, the City could revoke their use permit.

Commissioner Sandhu asked if there would be open seating behind the restaurant. Mr. Carrington replied that there will be no outdoor seating, all 48 seats will be inside.

Ali, concerned resident, commented that his home is a two-story building and the new restaurant will bother his family completely.

Close the Public Hearing

Motion to close the public hearing.

M/S: Galang/Garcia

AYES: 5

NOES: 0

Motion to approve Use Permit No. UP2004-22.

M/S: Garcia/Sandhu

AYES: 5

NOES: 0

3. CONSIDERATION OF AMENDMENTS TO THE ZONING ORDINANCE, SIGN ORDINANCE AND NEIGHBORHOOD BEAUTIFICATION ORDINANCE TEXTS (ZT2004-2): Applicant: City of Milpitas.

Tambri Heyden, Acting Planning and Neighborhood Services Director and Dennis Carrington, Senior Planner, presented a PowerPoint presentation to amend the following chapters of the Milpitas Municipal Code: Chapter 500 (Neighborhood Beautification Ordinance) and Chapter 10 (Zoning Code) to define continuous and non-continuous violations, reduce the timeframe to address violations, and allow immediate imposition of fines for non-continuous violations; and Chapter 30 (Sign Code) to reorganize and consolidate certain sections, provide definitions of terms, add administrative citation authority, require administrative approval for temporary promotional signs, expand sign program criteria and applicability, provide additional regulations for balloon signs, garage sale signs, open house directional signs, projecting signs, banner signs, coming soon signs, grand opening signs and public information signs and clarify prohibited, permitted and exempt signs. Staff recommended the Planning Commission recommend to City Council adoption of ordinance amendments implementing the proposed changes.

Commissioner Galang asked what is the next step once a resident receives a notification letter and doesn't respond within the 30 day period.

Commissioner Galang asked what is the process to report old cars lingering in front of a neighbor's house. Ms. Heyden responded that he could contact Gloria Anaya, Senior Housing Neighborhood Preservation Specialist at (408) 586-3075 to report the issue or call the NBO Hotline at (408) 586-3074.

Commissioner Galang asked if the Neighborhood Preservation Division staff pays a visit to the house and Ms. Heyden responded, "Yes".

Vice Chair Garcia referenced the executive summary matrix on page 3 and asked staff to explain their rationale on why the regulations do not apply to balloons in residential areas for non commercial purposes.

Ms. Heyden replied that staff did not want to regulate big holiday balloon decorations.

Vice Chair Garcia asked staff if they are expecting residents to have a big helium balloon over their homes. Ms. Heyden noted that the amendments would allow residents to do that. Vice Chair Garcia is concerned about helium balloons and felt they would be a hazard to aircraft navigation if they were to accidentally become loose and fly away. He liked the regulation because it requires the balloons to be tethered and fixed to the ground.

Ms. Heyden replied that could add a very simple text amendment to that effect.

Vice Chair Garcia asked how the abatement process is working within the NBO and asked if it will be used for zoning and for signs. Ms. Heyden replied that it is currently used for NBO and zoning, and the proposal is to add it to the sign code as well.

Vice Chair Garcia asked how is the abatement process working out. Ms. Heyden replied that the data suggests that 18.7% of violations are being corrected through the citation process and 5% are not being corrected.

Gloria Anaya, Senior Housing and Neighborhood Preservation Specialist, replied that the NBO has been in effect for four years and the process is working very well. In her 18 years experience with the City, this is one of the ordinances that is very clear and not very easy to enforce, however, the process itself is very nicely done. Staff does a site check and confirms that there is a violation. Staff will then inform the resident. When code enforcement is out in the field, they will do door knocking and speak to the residents. There may be times when there is a new resident and that is when staff likes to educate them first, and if need be, staff will issue a notice of violation. If they do have a hardship violation, they can request an extension. Staff will return to the site to make sure that the violation is non-continuing and staff likes to give the residents alternatives.

Vice Chair Garcia noted that at the bottom of page 5 – non combustable material is out of sequence. Ms. Heyden said that staff will make the changes.

Vice Chair Garcia asked Chair Lalwani if it is appropriate for staff to address the letter received from the Santa Clara County Association of Realtors. Chair Lalwani noted that it would be addressed during the public hearing.

Commissioner Mohsin asked if the citation notices are served when someone calls the hotline or are initiated by a field agent. Ms. Anaya replied that the complaints are received by anyone, could be a neighbor or someone driving by. Complaints are received by all sources. The main thing is once receiving the call to verify if the violation exists.

Commissioner Mohsin asked if a car parks in front of a lawn, what is the next step in the process. Ms. Anaya replied that staff tries to go out to the property and make the personal contact with the resident.

Commissioner Galang recalled that a patient of his complained that his neighbor had a dirty house and the city did not return his calls. He asked staff to verify the NBO hotline number. Ms. Anaya replied that the hotline number is (408) 586-3074 and if they want to speak to a live person, press zero. Ms. Anaya noted that her direct number is (408) 586-3075.

Chair Lalwani opened the public hearing:

Mike Queenan, CAC Commissioner, very strongly supports staffs proposal and noted that both task forces have done a great deal of work on a tedious subject and have pored over it very thoroughly. The CAC specifically supports the concept of code enforcement and moving towards code enforcement along with the citizen's complaint. He felt that as it continues along this direction it will be more and more in favor of good neighborhood congeniality when you have an additional way of resolving issues and he supports strongly the change from a 30 day process to a 15 day process to help move along the improvement of the neighborhood beautification. The CAC also supports strongly the implementation of the citation process after all of the other processes have failed. He felt that Gloria and her team have done a great job resolving many issues with a very limited staff, and this refocusing slightly will put a big strain on her staff but he thinks it needs to be done and is a great beginning.

Cece Cece Samoyes, 1955 Everglades drive, stated that the NBO is a working document and asked for the Commissions support of the next step of pro-active approach. It demonstrates to the citizens that the City continues to enforce this great parameter of a document. She thinks many citizens aren't aware that this is in place and if they see patrols and notice that neighbors are doing something to change, she thinks it will elevate the awareness of this document and what it means to the city of Milpitas. She asked that the Commission support the document to beautify the City.

Leann Lam, 553 Sark Court, is concerned about the NBO. She fully supports the Neighborhood Preservation Division staff and their tremendous effort for restoration. She noted that when she drives around the neighborhood there are inconsistencies of different home presentations whether it is lawn parking or trash. She felt there is a need to have more teeth behind what staff does. Every employee is being asked to do much more, however to reduce the complacency is a wonderful thing and she would like to see Milpitas be of higher quality.

Resident at 543 Sark Court, supports the neighborhood beautification ordinance. She has lived in milpitas for 25 years and there have been problems where her neighbor's front yard is not done. She noted that the neighborhood prides themselves on their street and will to continue to do their best in the beautiful city of Milpitas.

Frank de Schmidt, Chamber of Commerce member and member of the task force, noted that he served on the task force and attended all of the meetings. He thanked staff for all their work and time they put in and that the meetings were very positive. The Chamber appreciates staffs efforts, however in the letter the Commission received from the Santa Clara County Association of realtors, he felt that some of these issues need to be studied. He didn't hear a good description of the pro-active enforcements at the task force meeting. He noted that the first outreach business community meeting that staff set up were not attended by anyone even though the Chamber did send out e-mails to everyone. The second outreach meeting achieved attendance from Judy Wang real estate and staff gave a helpful presentation, but again, there wasn't really that much information in regards to the pro-active procedure. He recommended the Commission continue this item so that the EDC could review the amendments prior to them going to Council.

Tim Howard, Sign Company owner and member of the task force, noted that as a sign owner, you have to look at the aesthetic value of signs and felt that the ordinance is a good compromise to achieve that goal. The ordinance is also an economic benefit to the businesses in regards to tax revenue. The ordinance will also give the City teeth to enforce the issues. He reiterated Mr. De Schmidt's comments that the task force did have two public outreach meetings, and felt that another outreach meeting would not benefit the task force. He also thanked staff for all of their hard work and he is in support of the code amendments.

Heidi Wolfe-Reid, 1397 Yosemite Drive and member of the task force, addressed the letter from the Santa Clara County Association of Realtors. She noted that the City has a very good process, however, the ordinance needs a good looking over. She felt that the Association's concerns were not quite finished and in terms of the regulations, there is no major difference. The task force stopped at the prohibited signs issues and needs additional time to clarify the policy changes.

Don Peoples, 529 Main Street, President of Downtown Association and task force member, commented that the ordinance is very good and he also commends city staff for their adequate outreach. He noted that staff did make a presentation to the EDC and felt that the NBO is appropriate. He complained that the City is bombarded with signs and felt that the pro-active approach will be very good for the City.

Mr. Habib, 1551 California circle and task force member, attended all the meetings but one, and commended everyone at the City for their efforts. He felt that the end result of the task force is the best that can be achieved at this time and would encourage everyone to support the process. He said that it was a dramatic failure because no one could agree with the current sign ordinance and this new proposal will alleviate all of the issues, and help other business owners in the city to get the help they need. He is not convinced that the task force could draw more people to attend the outreach meetings and with the sake of progress, the task force may not be able to accomplish much more with more meetings. In regards to the pro-active complaint driven issue, if we do not give the city tools to enforce what they are doing, this is like giving someone a gun with blanks. He cautioned that being inflexible in the enforcements, there is some mechanics that would be able to appeal and encourages everyone to agree with the process

Close Public Hearing

Motion to close the public hearing.

M/S: Sandhu/ Galang

AYES: 5

NOES: 0

Chair Lalwani asked if staff would like to address the Santa Clara County Association of Realtors comments.

Ms. Heyden replied that she does not have any comments. The task force has addressed the issues raised in the comment letter and the majority of the task force members have felt the issues have been done. The City Attorney has been giving staff direction in regards to political signs and staff will bring this forward to the same group next year.

Commissioner Mohsin noted that she sees the work being done and if the task force appreciates the work, she certainly supports staff's recommendation.

Vice Chair Garcia also applauds the task force effort and felt that the document is much clearer and easier to read. He asked Ms. Heyden if the pro-active process could impact the city's budget.

Ms. Heyden replied that the Neighborhood Preservation Division will not add additional staff members. Each field inspector will be assigned a district and staff is making a number of improvements to the software programs such as standardizing form letters.

Vice Chair Garcia noted another concern in the letter that there is no mention of how the city would prioritize violations in a pro-active manner. Ms. Heyden responded that there are only 3 inspectors so when violations come in health and safety issues would be addressed first, than customer service requests, than pro-active violations.

Vice Chair Garcia noted that one of the speakers talked about the EDC meeting next week, and they were concerned about outreach and asked if there is a rush to push this through the city council.

Ms. Heyden replied that staff became aware of some struggles that several businesses were having this year with visibility from interstates. The City doesn't allow you to take credit for street frontage on an interstate unless your driveway is on that frontage. So if you were to take a drive through the interstates through other cities, you would notice that it doesn't apply there. So from a business perspective, the City needs to get a move on this to allow our businesses to compete with other businesses. In addition, the City is trying to attract auto dealerships and these kinds of signs are necessary in the auto world, so it would put the City in a competitive advantage.

Vice Chair Garcia commented that compared to what was done to the NBO which took a couple of years from start to finish, and a number of outreaches were held there, it just seems that this process is in a bit of a rush.

Ms. Heyden commented that staff is not done yet. Staff learned that the NBO was a huge step for the city and felt more comfortable in making the next step quicker.

Chair Lalwani asked if this information will be on the website and Ms. Heyden replied, "Yes".

Commissioner Galang asked if the billboards are regulated by the city or state and City Attorney Kit Faubion replied that the billboards are regulated by the state.

Ms. Heyden noted that Vice Chair Garcia had recommended a modification to residential balloons so if he would like staff to address that, he might want to include that in his motion.

Vice Chair Garcia amended the motion requesting staff to include addressing residential balloons, balloons being defined as helium filled that could go airborne.

Ms. Heyden asked if the intent was that they fall under the regulations and require a permit. Ms. Heyden suggested that they not fall under the permit requirements.

Vice Chair Garcia disagreed that staff defines a balloon as a big Santa Claus and he thinks of a balloon as helium filled. Ms. Heyden said that the definition encompasses all of the descriptions that Vice Chair Garcia just mentioned.

Mr. Carrington noted that the City has a maximum height limit of balloons at 50 feet, so it would be far below the legal flying height for planes. Also the definition for balloons is any large over 3 cubic feet in size inflatable hot, cold, or helium filled balloon that is used as an advertising device for any promotional event. The task force was trying to allow residents and commercial businesses to allow them to have a 50 foot maximum height limit and that the balloons be tethered so he felt that the definition is adequate as is.

Vice Chair Garcia agreed with the staff's definition of a balloon and withdrew his request.

Motion to recommend approval to City Council adopting ordinance No. 124.27.

M/S: Garcia/Galang

AYES: 5

NOES: 0

**4. ADMINISTRATIVE
ITEM NO. AD2003-16:**
General Plan conformance of
the O'Toole Elms.
Applicant: City of Milpitas.

Kim Duncan, Junior Planner, presented Administrative Item No. AD2003-16, General Plan conformance of the proposed Cultural Resource Site designation of the O'Toole Elms located between South Main and South Abel Streets. Ms. Duncan recommended that the Commission find the designation of the O'Toole Elms in conformance with the General Plan.

Vice Chair Garcia commented that every picture he sees of the O'toole elms has no leaves and asked staff if the elms are still alive. Mr. Lindsay said the elms are in extremely poor health and he has not seen extensive foliage on the trees. Some historic photographs of the elms give a true picture of what they used to look like and staff is excited about the opportunity of seeing a new grove there that will replicate what the elms looked like in the 1800's versus what it is looking like today.

Vice Chair Garcia asked if there is an effort to make the trees healthy and is concerned about designating the trees as a historical designation. Mr. Lindsay replied that the recommendation to move forward is a site designation. The proposal from KB homes to build a public park at the site, if that is approved by the council, would result in the removal of existing trees and the replanting of new elm trees so that the grove could be generated. Staff has several arborist reports that state the trees are beyond preservation and that they should be removed.

Vice Chair Garcia asked staff to clarify the Commission's vote to preserve seven elm trees. Mr. Lindsay stated that the Commission is being asked to find the PRCRC recommendation to the Council in conformance with the general plan. The recommendation is not specifying the number of trees. The recommendation is stating that the site of the grove has significance with the City.

Chair Lalwani opened the public hearing.

Don Peoples, President of Downtown Association, commented that there are a lot of people that love the elm trees and hopefully they will be preserved in some form. He felt it is important for them to be identified as a cultural resources and that it doesn't negatively impact the other projects. His office is close by and he can see the elms. There are leaves in the spring but they fall off very quickly. He would like to see the elms be identified as a landmark.

Close the Public Hearing

Motion to close the public hearing.

M/S: Sandhu/Mohsin

AYES: 5

NOES: 0

Motion to recommend to Council to find the designation of the O'Toole Elms in conformance with the General Plan.

M/S: Garcia/Sandhu

AYES: 5

NOES: 0

**X.
ADJOURNMENT**

The meeting was adjourned at 9:08 p.m. to the next regular meeting of January 12, 2005.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Veronica Rodriguez
Recording Secretary